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No. 15-1262

# In the Supreme Court of the United States

PATRICK MCCRORY, in his capacity as Governor of North Carolina, NORTH CAROLINA STATE BOARD OF ELECTIONS, and A. GRANT WHITNEY, JR., in his capacity as Chairman of the North Carolina State Board of Elections,

*Appellants,*

v.

DAVID HARRIS and CHRISTINE BOWSER,

*Appellees.*

**On Appeal from the United States District Court for the Middle District of North Carolina**

## JOINT APPENDIX VOLUME VI

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

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11 CVS 16896
11CVS 16940
(*Consolidated*)

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MARGARET DICKSON; *et al.*,
*Plaintiffs*

v.

ROBERT RUCHO, *et al.*,
*Defendants.*

NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, *et al*,
*Plaintiffs*

v.

THE STATE OF NORTH CAROLINA, *et al.*,
*Defendants*

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# AFFIDAVIT OF THOMAS L. BRUNELL

I, Thomas L. Brunell, being first duly sworn, depose and say:

1. I hereby incorporate my report dated June 14, 2011.

2. An important point that was not mentioned in my first report, and one that I think is critical to understand when dealing with racially polarized voting analysis, is that the standard operational method for handling different races for bivariate ecological regressions is to group blacks, which will

include both Hispanic Blacks and non-Hispanic Blacks in one group, and to put everyone else in another group. So often a report reads "White support for the Black candidate" when the real meaning ought to be "non-Black support for the Black candidate." It is important to understand this insofar as Whites, Asians, Hispanics, American Indians, and people who report themselves to be multiracial are grouped together for these analyses. To the extent that some of these racial minorities are supportive of the Black candidate, this may, in fact, cause the estimates of White support for the Black candidates to be overstated. If the question we are trying to answer is - "what is the non-Hispanic White support for the Black candidate?" then this fact is important to understand. This means one has to be careful regarding making generalized conclusions regarding the level of Black vote which is necessary to elect based on an analysis of elections where the White component has a high non-White element. In reading Dr. Litchman's affidavits, I am fairly certain that he handles the data in the same way - grouping all non-Blacks together (Litchman, second affidavit, page 4).

Amendment to First Report

3. After my deposition I rechecked the results of my analysis and noticed that there was an error in the addition of the numbers for calculating the Black support of the Black candidate. I interpreted the coefficient for the Black turnout variable by itself as the estimate, when one needs to add the constant term to this coefficient to get the estimate for Black support of the Black candidate. So in Table 1 below for Anson County, the estimate for the percentage of Blacks voting for Obama is (100*.837) + 12.0 = 95.7.

Originally the estimate was reported to be 83.7 percent.

4. For the counties with high levels of White cross-over voting, like Durham and Wake, the results make more sense. For instance in Durham, the estimate for percent of Blacks voting for Obama is 34.5 + 59.2 = 93.7 percent, and not 34.5 percent

5. As a result of the error above, the reporting of Black support for the Black candidate was understated in the first report The correction of this error makes it even clearer that racially polarized voting exists in North Carolina to an extent greater than initially reported.

6. So the evidence for racially polarized voting is even more consistent than I indicated in my original report I replicate the tables from my original report below.

Table 1. 2008 Democratic Presidential Primary Election Racial Bloc Voting Analysis

| County | Black Voter % | Constant | Number of Observations | R-sq |
|---|---|---|---|---|
| Anson | .837*** | 12.0*** | 11 | .99 |
| Beaufort | .683*** | 26.5*** | 21 | .88 |
| Bertie | .884*** | 8.8*** | 12 | .99 |
| Bladen | .885*** | 10.8*** | 17 | .97 |
| Camden | .683 | 44.8 | 3 | .84 |
| Caswell | .658*** | 26.8*** | 11 | .96 |
| Chowan | .915*** | 16.1** | 6 | .95 |
| Cleveland | .835** | 15.6*** | 28 | .97 |
| Columbus | .989*** | 4.3*** | 21 | .98 |
| Craven | .545*** | 34.4*** | 27 | .66 |
| Cumberland | .713*** | 24.4*** | 48 | .96 |

| | | | | |
|---|---|---|---|---|
| Duplin | .898*** | 9.8*** | 19 | .95 |
| Durham | .345*** | 59.2*** | 55 | .70 |
| Edgecombe | .821*** | 13.3*** | 21 | .99 |
| Forsyth | .477*** | 45.3*** | 101 | .84 |
| Franklin | .683*** | 23.8*** | 18 | .82 |
| Gaston | .753*** | 21.1*** | 46 | .90 |
| Gates | .932*** | 10.8* | 6 | .96 |
| Granville | .676*** | 26.6*** | 15 | .94 |
| Greene | 1.01*** | 4.7 | 10 | .93 |
| Guilford | .468*** | 46.2*** | 157 | .83 |
| Halifax | .806*** | 14.5*** | 30 | .96 |
| Harnett | .770*** | 18.2*** | 13 | .93 |
| Hertford | .834*** | 11.7** | 13 | .97 |
| Hoke | .726*** | 23.2*** | 13 | .91 |
| Jackson | 2.85** | 31.5*** | 13 | .45 |
| Jones | .845*** | 12.5*** | 7 | .98 |
| Lee | .667* | 24.4* | 5 | .85 |
| Lenoir | .788*** | 15.5*** | 22 | .98 |
| Martin | .845*** | 12.9*** | 13 | .98 |
| Mecklenburg | .445*** | 48.0*** | 194 | .89 |
| Nash | .794*** | 17.7*** | 26 | .95 |
| Northampton | .867*** | 9.6* | 18 | .95 |
| Onslow | .742*** | 26.0*** | 23 | .91 |
| Pasquotank | .719*** | 25.3*** | 13 | .97 |
| Perquimans | .568** | 26.6** | 7 | .72 |
| Person | .723*** | 21.9*** | 14 | .94 |
| Pitt | .592*** | 33.1*** | 38 | .83 |
| Richmond | .868*** | 13.2*** | 16 | .95 |
| Robeson | .849*** | 10.9*** | 39 | .93 |
| Rockingham | .746*** | 20.9*** | 17 | .96 |
| Sampson | .836*** | 11.8*** | 23 | .98 |
| Scotland | .744*** | 21.4*** | 10 | .96 |
| Tyrrell | .717*** | .179*** | 6 | .98 |

| | | | | |
|---|---|---|---|---|
| Union | .668*** | 28.6*** | 49 | ,70 |
| Vance | .748*** | 20.0*** | 16 | .99 |
| Wake | .411*** | 50.6*** | 188 | .76 |
| Warren | .643*** | 29.0*** | 14 | .72 |
| Washington | .855*** | 13.3** | 6 | .99 |
| Wayne | .784*** | 18.8*** | 30 | .96 |
| Wilson | .746*** | 20.6 | 24 | .97 |

Note: the asterisks indicate levels of statistical significance for the two coefficients in each regression. * indicates p<.05, **p<.01, ***p<.001. Any asterisk indicates statistical significance; more asterisks indicate lower levels of uncertainty.

7. 2008 Presidential General Election

The most recent presidential election is a good data point to investigate whether racially polarized voting exists in North Carolina. The candidates were Barack Obama and John McCain. Ele.70ons that have an African American running against a White candidate are the best elections to look for bloc voting.

Table 2. 2008 Presidential Election Racial Bloc Voting Analysis

| County | Black Voter % | Constant | Number of Observations | R-sq |
|---|---|---|---|---|
| Anson | .792*** | 22.6*** | 11 | .97 |
| Beaufort | .453*** | 5.4*** | 21 | .89 |
| Bertie | .94*** | 10.3*** | 12 | .99 |
| Bladen | .910*** | 14.8*** | 17 | .99 |
| Camden | .427 | 27.1* | 3 | .86 |
| Caswell | .801*** | 20.9*** | 10 | .98 |
| Chowan | .883*** | 22.6*** | 6 | .94 |
| Cleveland | .877*** | 20.1*** | 28 | .96 |
| Craven | .749*** | 26.1*** | 27 | .85 |
| Cumberland | .823*** | 24.0*** | 37 | .97 |
| Durham | .413*** | 59.4*** | 53 | .49 |

| | | | | |
|---|---|---|---|---|
| Edgecombe | .879*** | 14,5*** | 21 | .99 |
| Forsyth | .689*** | 36.1*** | 101 | .85 |
| Franklin | .723*** | 28.4*** | 18 | .93 |
| Gaston | .825*** | 24.3*** | 46 | .91 |
| Gates | .843*** | 21.9*** | 6 | .99 |
| Granville | .755*** | 26.5*** | 15 | .95 |
| Greene | ,906*** | 12.8** | 9 | .92 |
| Guilford | .667*** | 37.3*** | 152 | .82 |
| Halifax | .815*** | 21.0*** | 30 | .86 |
| Harnett | .784*** | 23.2*** | 13 | .90 |
| Hertford | .859*** | 18.0*** | 13 | .93 |
| Hoke | .795*** | 25.1*** | 12 | .86 |
| Jackson | 2.24* | 48.0*** | 10 | .43 |
| Lee | N/A | | | |
| Lenoir | .869*** | 14.5*** | 22 | .99 |
| Martin | .861*** | 15.4*** | 13 | .98 |
| Mecklenburg | .639*** | 41.9*** | 195 | .89 |
| Nash | .924*** | 15.8*** | 26 | .98 |
| Northampton | .813*** | 18.6*** | 18 | .98 |
| Onslow | .830*** | 22.1*** | 22 | .91 |
| Pasquotank | .822*** | 24.4*** | 13 | .96 |
| Perquimans | .677** | 26.9*** | 7 | .86 |
| Person | .876*** | 20.5*** | 14 | .97 |
| Pitt | .704*** | 30.9*** | 38 | .76 |
| Robeson | .599*** | 37.8*** | 41 | .63 |
| Rockingham | .816*** | 24.8*** | 16 | .96 |
| Scotland | .768*** | 26.7*** | 10 | .98 |
| Union | .903*** | 25.1*** | 48 | .88 |
| Vance | .831*** | 19.9*** | 16 | .99 |
| Wake | .569*** | 45.8*** | 188 | .68 |
| Washington | .979*** | 10.0** | 6 | .99 |
| Wayne | .902*** | 14.6*** | 30 | .99 |
| Wilson | .821*** | 19.6*** | 24 | .98 |

Note: the asterisks indicate levels of statistical significance for the two coefficients in each regression. * indicates $p<.05$, ** $p<.01$, *** $p<.001$. Any asterisk indicates statistical significance; more asterisks indicate lower levels of uncertainty.

8. 2004 State Auditor General Election

This election is useful as it provides another look at a general election that had a Black candidate (Ralph Campbell) facing off against a White opponent (Leslie Merritt).

Table 3. 2004 State Auditor Election Racial Bloc Voting Analysis

| County | Black Voter % | Constant | Number of Observations | R-sq |
|---|---|---|---|---|
| Anson | .619*** | 43.0*** | 8 | .89 |
| Beaufort | .869*** | 29.1*** | 20 | .92 |
| Bertie | .688*** | 34.8*** | 11 | .97 |
| B laden | .613*** | 45.1*** | 15 | .92 |
| Camden | N/A | | 2 | |
| Caswell | .728*** | 37.8*** | 11 | .82 |
| Chowan | .702*** | 34.5*** | 4 | .90 |
| Cleveland | .877*** | 20.1*** | 28 | .78 |
| Craven | .785*** | 27.8*** | 18 | .94 |
| Cumberland | .629*** | 33.5*** | 64 | .93 |
| Durham | .514*** | 50.0*** | 32 | .76 |
| Edgecombe | .633*** | 37.4*** | 21 | .96 |
| Forsyth | .654*** | 34.1*** | 101 | .84 |
| Franklin | .833*** | 33.5*** | 17 | .89 |
| Gaston | .754*** | 26.8*** | 46 | .85 |
| Gates | .259 | 54.3*** | 5 | .25 |
| Granville | .819*** | 34.2*** | 14 | .89 |
| Greene | 1.00*** | 23.8*** | 10 | .76 |
| Guilford | .674*** | 34.8*** | 115 | .85 |
| Halifax | .616*** | 40.6*** | 30 | .88 |
| Harnett | .666*** | 35.3*** | 22 | .69 |
| Hertford | .598*** | 39.2*** | 13 | .94 |
| Hoke | .784** | 30.5** | 11 | .66 |
| Jackson | 3.40* | 48.4*** | 18 | .19 |
| Lee | .636*** | 39.2*** | 13 | .80 |
| Lenoir | .733*** | 28.2*** | 21 | .97 |
| Martin | .609*** | 40.8*** | 13 | .88 |
| Mecklenburg | .711*** | 3:1.6*** | 180 | .90 |
| Nash | .821*** | 28.8*** | 24 | .94 |

| | | | | |
|---|---|---|---|---|
| Northampton | .537*** | 46.9*** | 18 | .87 |
| Onslow | .608*** | 27.9*** | 23 | .75 |
| Pasquotank | .600*** | 42.1*** | 6 | .89 |
| Perquimans | 1.08* | 27.1* | 6 | .64 |
| Person | .728*** | 36.6*** | 6 | .98 |
| Pitt | .627*** | 36.2*** | 38 | .80 |
| Robeson | .322*** | 61.7*** | 41 | .26 |
| Rockingham | .637*** | 37.0*** | 30 | .90 |
| Scotland | .646*** | 43.0*** | 7 | .93 |
| Union | .858*** | 22.1*** | 35 | .85 |
| Vance | .613*** | 41.2*** | 13 | .96 |
| Wake | .595*** | 40.3*** | 181 | .71 |
| Washington | .812*** | 33.8** | 6 | .95 |
| Wayne | .784* | 29.3* | 3 | .99 |
| Wilson | .696*** | 32.4*** | 24 | .97 |

Conclusion

9. Racially polarized voting is present in North Carolina. White and Black voters% the areas investigated systematically support opposing candidates.

This the 10th day of December, 2012.

/s/ Thomas L. Brunell
Thomas L. Brunell, Ph.D.

Sworn and subscribed before me this the 10th day of December, 2012.

/s/ Shiela Denise Rollerson
Notary Public
My commission expires: 10/28/2014

EXHIBIT A

*Dickson v. Rucho, 11* CVS 16896 and 11 CVS 16940 (consolidated) (July 8, 2013) with Appendix A & B

PART 1 OF 2

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

---

11 CVS 16896
11 CVS 16940
*(Consolidated)*

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MARGARET DICKSON, *et al.*,
*Plaintiffs,*

v.

ROBERT RUCHO, *et al.*,
*Defendants.*

---

NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, *et al.*,
*Plaintiffs,*

v.

THE STATE OF NORTH CAROLINA, *et al.*,
*Defendants.*

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JUDGMENT and MEMORANDUM OF DECISION

# OUTLINE OF THE JUDGMENT OF THE TRIAL COURT

I. INTRODUCTION

II. PROCEDURAL HISTORY

III. SUMMARY JUDGMENT STANDARD

IV. ARE THE CHALLENGED DISTRICTS A RACIAL GERRYMANDER THAT VIOLATES THE EQUAL PROTECTION GUARANTEES OF THE UNITED STATES OR NORTH CAROLINA CONSTITUTIONS?

- A. Burden of Proof
- B. Level of Scrutiny
- C. Analysis of the Voting Rights Act Districts created in the Enacted Plan under the Strict Scrutiny Standard of Review
  1. Compelling Governmental Interests
     - a. Avoiding Voting Rights Act §2 Liability
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## I. INTRODUCTION

Redistricting in North Carolina is an inherently political and intensely partisan process that results in political winners and, of course, political losers. The political party controlling the General Assembly hopes, through redistricting legislation, to apportion the citizens of North Carolina in a manner that will secure the prevailing party's political gain for at least another decade. While one might suggest that there are more expedient, and less manipulative, methods of apportioning voters, our redistricting process, as it has been for decades, is ultimately the product of democratic elections and is a compelling reminder that, indeed, "elections have consequences."

Political losses and partisan disadvantage are not the proper subject for judicial review, and those whose power or influence is stripped away by shifting political winds cannot seek a remedy from courts of law, but they must find relief from courts of public opinion in future elections. Our North Carolina

Supreme Court has observed that "we do not believe the political process is enhanced if the power of the courts is consistently invoked to second-guess the General Assembly's redistricting decisions." *Pender County v. Bartlett*, 361 N.C. 491, 506 (2007) [hereinafter *Pender County*] *aff'd sub nom. Bartlett v. Strickland*, 556 U.S. 1 (2009). Rather, the role of the court in the redistricting process is to ensure that North Carolinians' constitutional rights – not their political rights or preferences – are secure. In so doing, this trial court must apply prevailing law, consider arguments, and examine facts dispassionately and in a manner that is consistent with each judge's oath of office – namely "without favoritism to anyone or to the State."

This case has benefited from exceptionally well-qualified legal counsel who have zealously represented their clients and their respective positions. The court has benefited from thorough briefing, a well-developed factual record, and persuasive arguments. The court has carefully considered the positions advocated by each of the parties and the many appellate decisions governing this field of law, and the court has pored over thousands of pages of legal briefs, evidence and supporting material. The trial court's judgment, as reflected in this memorandum of decision, is the product of due consideration of all arguments and matters of record.

It is the ultimate holding of this trial court that the redistricting plans enacted by the General Assembly in 2011 must be upheld and that the Enacted Plans do not impair the constitutional rights of the citizens of North Carolina as those rights are defined by law. This decision was reached unanimously by the trial court. In other words, each of the three judges on the trial

court – appointed by the North Carolina Chief Justice from different geographic regions and each with differing ideological and political outlooks – independently and collectively arrived at the conclusions that are set out below. The decision of the unanimous trial court follows.

## II. PROCEDURAL HISTORY

On July 27 and 28, 2011, following the 2010 Decennial Census, the North Carolina General Assembly enacted new redistricting plans for the North Carolina House of Representatives, [1] North Carolina Senate, [2] and United States House of Representatives[3] pursuant to Article II, §§ 3 and 5 of the North Carolina Constitution and Title 2, § 2a and 2c of the United States Code. On September, 2, 2011, the North Carolina Attorney General sought administrative preclearance from the United States Attorney General as required by § 5 of the Voting Rights Act ("VRA"). 42 U.S.C. § 1973c (2013). The redistricting plans were pre-cleared administratively by the United States Attorney General on November 1, 2011.

On November 1, 2011, the General Assembly also alerted the United States Department of Justice that an error in the computer software program used to draw the redistricting plans had caused certain areas of the state to be omitted from the original plans. The

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[1] Session Law 2011-404 (July 28, 2011) also known as "Lewis-Dollar-Dockham 4 [hereinafter "Enacted House Plan"].

[2] Session Law 2011-402 (July 27, 2011) also known as "Rucho Senate 3 [hereinafter "Enacted Senate Plan"]."

[3] Session law 2011-403 (July 28, 2011) also known as "Rucho-Lewis Congress 3 [hereinafter "Enacted Congressional Plan"], Collectively, the 2011 plans are referred to as the "Enacted Plans."

General Assembly passed legislation on November 1, 2011 to cure this technical defect. The United States Attorney General pre-cleared the revised plans on December 8, 2011.

Meanwhile, Plaintiffs filed separate suits on November 3 and 4, 2011, challenging the constitutionality of the redistricting plans and seeking a preliminary injunction to prevent Defendants[4] from conducting elections using the Enacted Plans. In accordance with N. C. Gen. Stat. § 1-267.1, the Chief Justice appointed a three judge panel to hear both actions [hereinafter the "trial court"].

On December 19, 2011, the trial court consolidated the cases. On the same day Defendants filed their answers and moved to dismiss the suit. Thereafter, on January 20, 2012, the trial court entered an order denying Plaintiffs' motion for a preliminary injunction. The trial court also entered an order on February 6, 2012 allowing in part and denying in part Defendants' motion to dismiss.[5]

On April 20, 2012, the trial court entered an order compelling the production of certain documents. The trial court's order was appealed as a matter of right to the North Carolina Supreme Court ("N.C. Supreme

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[4] The Defendants are the State of North Carolina, the State Board of Elections and various members of the North Carolina General Assembly named only in their official capacity. The Defendants are collectively referred to in this Memorandum as "the Defendants" or "the General Assembly."

[5] The Court, in its February 6, 2012 order, allowed Defendants' Motions to Dismiss as to claims for relief 6, 7, 8, 12 and 13 of the *NC State Conference of the Branches of the NAACP et al. v. The State of North Carolina et al.* complaint and claims for relief 1, 2, 3, 4, 5, 6, 7, 8, 17 and 18 of the *Dickson et al. v. Rucho et al.* complaint.

Court"). On January 25, 2013, the N.C. Supreme Court issued its ruling on that interlocutory matter.

During the week of February 25, 2013, the trial court conducted hearings on cross-motions for summary judgment filed by the parties. Following the hearings, the trial court took those matters under advisement.

On May 13, 2013, the trial court, pursuant to Rule 42(b)(1) of the North Carolina Rules of Civil Procedure, ordered that two issues be separated from the remaining pending issues and that a bench trial be held on those two issues.[6] A bench trial was held on June 5 and 6, 2013, before the three judges of the trial court, who received evidence through witnesses and designations of the record.

The trial court, having considered all matters of record and the arguments of counsel, now enters this Judgment.

## III. SUMMARY JUDGMENT STANDARD

Summary judgment must be granted when the "pleadings, depositions, answers to interrogatories, and the admissions on file, together with the affidavits, if any, show that there is no genuine issue

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[6]The two issues separated for trial in the May 13, 2013 order were: "(A) Assuming application of a strict scrutiny standard and, in considering whether the Enacted Plans were narrowly tailored, was each challenged Voting Rights Act ("VRA") district drawn in a place where a remedy or potential remedy for racially polarized voting was reasonable for purposes of preclearance or protection of the State from vote dilution claims under the Constitution or under § 2 of the VRA?" and "(B) For six specific districts (Senate Districts 31 and 32, House Districts 51 and 54 and Congressional Districts 4 and 12 – none of which is identified as a VRA district), what was the predominant factor in the drawing of those districts?"

as to any material fact and that any party is entitled to judgment as a matter of law." N.C. R. Civ. P. 56(c). The rule is "designed to eliminate the necessity of a formal trial where only questions of law are involved and a fatal weakness in the claim of a party is exposed." *Dalton v. Camp*, 353 N.C. 647, 650 (2001). "When considering a motion for summary judgment, the trial judge must view the presented evidence in a light most favorable to the non-moving party. Moreover the party moving for summary judgment bears the burden of establishing the lack of any triable issue." *Id.* at 651 (citation omitted).

Pending before the trial court is the Defendants' Motion for Summary Judgment seeking judgment in Defendants' favor on each of Plaintiffs' claims. Also pending is the Plaintiffs' Motion for Partial Summary Judgment seeking judgment in Plaintiffs' favor on many of their claims against the Defendants. The trial court, in considering these cross-motions for summary judgment, has concluded that certain discrete issues present genuine issues of material fact and thus, as to those issues, summary judgment would be inappropriate. In the trial court's May 13, 2013 order (*supra.* at fn. 6), those discrete issues were identified and separated from the remaining issues in the case and, in accordance with that order, a bench trial, limited to evidence on those issues, has occurred. The trial court's findings of fact and conclusions of law with respect to those discrete issues are set out and incorporated into this Judgment.

As for the remaining issues raised by the parties' cross-motions for summary judgment, the trial court concludes that no genuine issues of material fact exist, and that the remaining issues present only issues of

law.[7] Therefore, all remaining issues can be resolved through summary judgment. The trial court's conclusions of law on each of these issues are also set forth in this Judgment.[8]

## IV. ARE THE CHALLENGED DISTRICTS A RACIAL GERRYMANDER THAT VIOLATES THE EQUAL PROTECTION GUARANTEES OF THE UNITED STATES OR NORTH CAROLINA CONSTITUTIONS?. *(Dickson amended complaint, Claims 19-24; NAACP amended complaint Claims 1-3 & 9-11)*

Plaintiffs contend that the challenged districts of the Enacted Plans violate the equal protection clauses of the North Carolina and United States constitutions by unlawfully classifying voters and otherwise discriminating against voters on the basis of race. The trial court has concluded that the determination of this issue is a mixed question of law and fact.

### *A. Burden of Proof*

With respect to redistricting, because the task is one that ordinarily falls within a legislature's sphere of competence, the United States Supreme Court

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[7] See further, fn. 12, infra.

[8] Traditionally, in granting or denying summary judgment, trial courts' written orders are general and non-specific, and trial courts often refrain from elaborating upon their reasoning. In this matter, perhaps ignoring the advice of Will Rogers to "never miss a good chance to shut up," the trial court has opted to share its reasoning because the issues presented are ones of important public concern. The trial court has not endeavored to address all arguments supporting the results set out herein, fully recognizing that any appellate review of this matter, with the exception of matters of evidence, is de novo. Rather, the trial court has set out its reasoning on the issues it has concluded are salient and essential to the outcome.

(hereinafter "Supreme Court") has made it clear that the legislature must have discretion to exercise political judgment necessary to balance competing interests. Thus, in reviewing the legality of a redistricting plan, "courts must 'exercise extraordinary caution' in adjudicating claims that a State has drawn district lines on the basis of race." *Easley v. Cromartie*, 532 U.S. 234, 242 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)) [hereinafter *Cromartie II*].

The Plaintiffs bear the burden of proof of establishing that the Enacted Plans violate equal protection guarantees. This remains true even in the context of the strict scrutiny analysis discussed below. Under strict scrutiny, the burden of proof as to whether race was the overriding consideration behind a redistricting plan "rests squarely with the Plaintiffs." *Johnson v. Miller*, 864 F, Supp. 1354, 1378-79 (S.D. Ga. 1994) *aff'd 515* U.S. 900 (1995). If the Plaintiffs meet that burden, the state then has the burden of "producing evidence that the plan's use of race is narrowly tailored to further a compelling state interest, and the plaintiffs bear the ultimate burden of persuading the court either that the proffered justification is not compelling or that the plan is not narrowly tailored to further it." *Shaw v. Hunt*, 861 F. Supp. 408, 436 (E.D. N.C. 1994). The state's burden of production is a heavy burden because "the purpose of strict scrutiny is to 'smoke out' illegitimate uses of race by assuring that the [government] is pursuing a goal important enough to warrant use of a highly suspect tool." *Richmond v. J.A. Croson*, 488 U.S. 469, 493 (1989). Racial classifications are "presumptively invalid and can be upheld only upon an extraordinary justification" by the state. *Shaw v. Reno*, 509 U.S. 630,

643-44 (1993) [hereinafter *Shaw I*] (quoting *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979)).

The heavy duty of production upon the state was affirmed in the Supreme Court's most recent equal protection analysis in *Fisher y. University of Texas*, 570 U.S._(2013) where, in the context of an affirmative action plan at an academic institution, the Court said:

> the University must prove that the means chosen by the University to attain diversity are narrowly tailored to that goal. On this point, the University receives no deference. . . . it is for the courts, not the university administrators, to ensure that "the means chosen to accomplish the government's asserted purpose must be specifically and narrowly framed to accomplish that purpose."

*Id.* at No. 11-345, slip op. at 10, (citing *Grutter v. Bollinger*, 539 U.S. 306, 333, 337 (2003)). The Court summarized the respective burdens as follows: "[a] plaintiff, of course, bears the burden of placing the validity of a university's adoption of an affirmative action plan in issue. But strict scrutiny imposes on the university the ultimate burden of demonstrating, before turning to racial classifications, that available, workable race-neutral alternatives do not suffice." *Id.* at 11.

The *Fisher* Court also provides instructive language to the trial court for the judicial review of an equal protection claim by explaining that "narrow tailoring also requires that the reviewing court verify that it is 'necessary' for a university to use race to achieve the educational benefits of diversity. . . . Although 'narrow tailoring does not require exhaustion of every *conceivable* race-neutral alternative,' strict scrutiny does require a court to examine with care, and not

defer to, a university's 'serious good faith consideration of workable race neutral alternatives.'" *Id.* at 10 (emphasis original).

There are, however, two important distinctions that must be noted between the *Fisher* holding, which relates to strict scrutiny of university enrollment policies, and judicial review of claims of racial gerrymandering. The first has already been noted: redistricting, unlike university enrollment, is an inherently political process delegated to the legislative branch of government. Second, unlike academic admission policies, where a university can create affirmative action plans on the basis of relatively easily measured current and historic enrollment data, in redistricting, a legislature must, to a certain extent, tailor its redistricting plans according to its best predictions of how a future court or the U.S. Department of Justice will, at a future date after enactment, view those plans if challenged in litigation or when submitted for preclearance. A legislature must, in legislative redistricting, peer into the future somewhat because it must take into account the compelling governmental interests of avoiding *future* liability under § 2 of the VRA and ensuring *future* preclearance of the redistricting plans under § 5 of the VRA. *See; Shaw v. Hunt*, 517 U.S. 899, 916 (1996) [hereinafter *Shaw II*] ("the legislative action must, at a minimum, remedy the *anticipated* violation or achieve compliance to be narrowly tailored." (emphasis added)). Consequently, any judicial standard of review that requires the reviewing court to strike a racial classification that is not "necessary," in absolute terms, to avoid some yet unknown liability or yet unknown objection to preclearance would be an impossibly stringent standard for both the legislature to meet or the court to apply. Recognizing this, the

Supreme Court has instructed, with respect to redistricting plans designed to avoid future § 2 liability or to ensure § 5 preclearance, "that the 'narrow tailoring' requirement of strict scrutiny allows the States a limited degree of leeway in furthering such interests. If the State has a 'strong basis in evidence' for concluding that creation of a majority-minority district is reasonably necessary to comply with § 2, and the districting that is based on race 'substantially addresses the § 2 violation,' it satisfies strict scrutiny." *Bush v. Vera*, 517 U.S. 952, 977 (1996) (citations omitted) (rejecting as "impossibly stringent" the lower court's view of the narrow tailoring requirement that "a district must have the least possible amount of irregularity in shape, making allowances for traditional districting criteria") (citing *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 291 (1986) ("state actors should not be 'trapped between the competing hazards of liability' by the imposition of unattainable requirements under the rubric of strict scrutiny.")).

*B. Level of Scrutiny*

Generally, all racial classifications imposed by a government must be analyzed by a reviewing court under strict scrutiny, even if the laws are "remedial" or "benign" in nature. *Johnson v. California*, 543 U.S. 499, 505 (2005); *Shaw I*, 509 U.S. at 656; *Wygant*, 476 U.S. 267. However, strict scrutiny does not apply to redistricting plans merely because the drafters prepared plans with a "consciousness of race." Nor does it apply to all cases of intentional creation of majority-minority districts, or where race was a motivation for the drawing of such districts. *Vera*, 517 U.S. at 958. Indeed, because of the VRA, race is "obviously a valid consideration in redistricting, but a voting district that is *so* beholden to racial concerns

that it is inexplicable on other grounds becomes, *ipso facto*, a racial classification." *Johnson v. Miller*, 864 F. Supp. at 1369.

Rather, in redistricting cases, strict scrutiny is an appropriate level of scrutiny when plaintiffs establish that "all other legislative districting principles were subordinated to race and that race was the predominant factor motivating the legislature's redistricting decision." *Cromartie v. Hunt*, 133 F. Supp. 2d 407 (2000) (citing *Miller v. Johnson*, 515 U.S. 900, 916 (1995)); *Vera*, 517 U.S. at 959 (citing *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). The districts must be unexplainable on grounds other than race, and it must be established that the legislature neglected all traditional redistricting criteria such as compactness, continuity, respect for political subdivisions and incumbency protection. *Cromartie v. Hunt*, 133 F. Supp. 2d 407; *Vera*, 517 U.S. at 959.

Unless the legislature acknowledges that race was the predominant factor motivating redistricting decisions, the determination by the trial court of the legislature's motive and, hence, the appropriate level of scrutiny, is an inherently factual inquiry requiring "a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). In the absence of direct evidence of racial motivation, circumstantial evidence, such as dramatically irregular shapes of districts, may serve as a "proxy for direct evidence of a legislature's intentions." *Johnson v. Miller*, 864 F. Supp. at 1370 (citing *Shaw I*, 509 U.S. at 647). Indeed, a dramatically irregular shaped district has been called the "smoking gun," revealing the racial intent needed for an Equal Protection claim. *Id.*

In this litigation, however, the trial court concludes that it is able to by-pass this factual inquiry for some, but not all, of the challenged districts. The Plaintiffs collectively challenge as racial gerrymanders 9 Senate, 18 House and 3 U.S. Congressional districts created by the General Assembly in the Enacted Plans. [9] Of those 30 challenged districts, it is undisputed that the General Assembly intended to create 26 of the challenged districts to be "Voting Rights Act districts" [hereinafter "VRA districts"] and that it set about to draw each of these VRA districts so as to include at least 50% Total Black Voting Age Population [hereinafter "TBVAP"]. [10] Deft.' Memo. Supp. Summ. J. 3. Moreover, the General Assembly acknowledges that it intended to create as many VRA districts as needed to achieve a "roughly proportionate" number of Senate, House and Congressional districts as compared to the Black population in North Carolina. *Id.* To draw districts based upon these criteria necessarily requires the drafters of districts to classify residents by race so as to include a sufficient number of black voters inside such districts, and consequently exclude white voters from the districts, in an effort to achieve a desired racial composition of >50% TBVAP and the desired "rough proportionality." This is a racial classification.

Racial and ethnic classifications of any sort are "inherently suspect and call for the most exacting judicial scrutiny." *Regents of Univ. of Cal. v. Bakke*,

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[9] Plaintiffs collectively challenge as racial gerrymanders Senate Districts 4, 5, 14, 20, 21, 28, 32, 38 and 40, House Districts 5, 7, 12, 21, 24, 29, 31, 32, 33, 38, 42, 48, 54, 57, 99, 102, 106 and 107, and Congressional Districts 1, 4 and 12.

[10] Of the challenged districts listed in fn. 9, supra, all but Senate District 32, House District 54 and Congressional Districts 4 and 12 were created by the General Assembly as VRA Districts.

438 U.S. 265, 291 (Powell, J., 1978). "Political judgments regarding the necessity for the particular classification may be weighed in the constitutional balance, *Korematsu v. United States*, 323 U.S. 214 (1944), but the standard of justification will remain constant. . . . When [classifications] touch upon an individual's race or ethnic background, he is entitled to a judicial determination that the burden he is asked to bear on that basis is precisely tailored to serve a compelling governmental interest." *Bakke, supra* at 299. Thus, the trial court concludes, for the purpose of this analysis, that in drawing VRA districts – even though legislative intent may have been remedial and the districts may have been drawn to conform with federal and state law to provide Black voters in those districts with an opportunity to elect their preferred candidate of choice – the shape, location and racial composition of each VRA district was predominantly determined by a racial objective and was the result of a racial classification sufficient to trigger the application of strict scrutiny as a matter of law.

In choosing to apply strict scrutiny, the trial court acknowledges that a persuasive argument can be made that compliance with the VRA is but one of several competing redistricting criteria balanced by the General Assembly and that a lesser standard of review might be appropriate. *See, e.g., Vera*, 517 U.S. at 958; *Wilkins v. West*, 264 Va. 447 (2002). Nonetheless, the trial court employs the strict scrutiny standard of review for two additional reasons: (1) the methodology developed by our appellate courts for analysis of constitutional claims under the strict scrutiny standard provides a convenient and systematic roadmap for judicial review, *see, e.g., Fisher v. Univ. of Tex.*, 631 F.3d 213, 231 (5th Cir. Tex. 2011) *vacated and remanded* 570 U.S._(2013); and (2)

if the Enacted Plans are found to be lawful under a strict scrutiny standard of review, and the evidence considered in a light most favorable to the Plaintiffs, then, *a fortiori*, the Enacted Plans would necessarily withstand review, and therefore be lawful, if a lesser standard of review is indeed warranted and a less exacting level of scrutiny applied.

As for the remaining four challenged districts, namely those not created by the General Assembly as VRA Districts, the trial court has received and examined evidence regarding the General Assembly's motive so as to ascertain whether race was the predominant factor motivating the shape and composition of these districts. The trial court's findings of fact and conclusions are set out below at § IV(D).

C. *Analysis of the Voting Rights Act Districts created in the Enacted Plans under the Strict Scrutiny Standard of Review*

Under the strict scrutiny analysis, the trial court must determine (1) whether the Enacted Plans further a "compelling governmental interest" and (2) whether the Enacted Plans are "narrowly tailored" to further that interest. *Wygant*, 476 U.S. at 274. In this case, the Defendants assert that the VRA Districts in the Enacted Plans were drawn to protect the State from liability under § 2 of the VRA, and to ensure preclearance of the Enacted Plans under § 5 of the VRA.

*1. Compelling Governmental Interest*

In general, compliance with the Voting Rights Act can be a compelling governmental interest. [11] A

[11] In *Vera*, five members of the Court "assumed without deciding" that compliance with § 2 of the Voting Rights Act is a

redistricting plan furthers a compelling governmental interest if the challenged districts are "reasonably established" to avoid liability under § 2 of the VRA or the challenged districts are "reasonably necessary" to obtain preclearance of the plan under § 5 of the VRA. *Shaw I*, 509 U.S. at 655; *Vera*, *517* U.S. at 977; *Crarnartie v. Hunt*, 133 F. Supp. 2d at 423.

To determine whether, as a matter of law, the Enacted Plans further compelling governmental interests, the trial court must examine evidence before the General Assembly at the time the plans were adopted and determine, from that evidence, whether the General Assembly has made a showing that it had a "strong basis in evidence" to conclude that the districts, as drawn, were reasonably necessary to avoid liability and obtain preclearance under the VRA. *Crornartie v. Hunt*, 133 F. Supp. 2d 407; *Shaw II*, *517* U.S. at 910.[12]

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compelling state interest. 517 U.S. at 977 (plurality opinion); *Id.* at 1003 (concurring opinion of Thomas, J., joined by Scalia, J.). Justice O'Connor, however, who authored the plurality opinion, also wrote a separate concurring opinion in which she expressed her opinion that compliance with the Act is a compelling state interest, *Id.* at 992 (concurring opinion of O'Connor, J.), a view that seems to be shared by the four dissenting justices as well, *Id.* at 1004 (dissenting opinion of Stevens, I., joined by Ginsberg and Breyer, II); 517 U.S. at 1065 (Souter, J., dissenting, joined by Ginsberg and Breyer, II). *See further, Cromartie v. Hunt*, 133 F. Supp. 2d at 423 (finding compliance with VRA § 2 and § 5 to be compelling state interests).

[12] The Plaintiffs and Defendants are in agreement that substantially all of the issues in this litigation can be determined as a matter of law through summary judgment. The Plaintiffs' inform the trial court that: "[i]n applying strict scrutiny, this court should examine the evidence that the legislature had before it when drawing each of the challenged districts and determine: (I) whether *as a matter of law* that evidence constitutes strong evidence that the districts created were necessary to meet the

*a. Avoiding Voting Rights Act §2 Liability*

Avoiding liability under §.2 of the VRA can be a compelling governmental interest. *Vera,* 517 U.S. at 977; *Crornartie v. Hunt,* 133 F. Supp. 2d at 423. The

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identified compelling public interest; and (2) whether *as a matter of law* that evidence constitutes strong evidence that the legislature used race in drawing the districts only to the extent necessary to achieve some compelling goal." The Plaintiffs further acknowledge that "*there is no material dispute* here over the *process* that the legislature used in drawing the challenged districts or the *information* upon which the legislature says it relied to justify the districts it drew." Pits' Supp. Mem. Summ. J. 3 (emphasis added). The Defendants likewise agree that substantially all issues in this litigation are appropriately resolved by summary judgment, although the Defendants further suggest that the "strong basis in evidence" test resembles the "substantial evidence based upon the whole record" standard used by the North Carolina Supreme Court and federal courts to review agency decisions. *See, e.g. N.C. Dep't of Env't and Natural Res. v. Carroll*, 358 N.C. 649, 660 (2004). Defs.' Memo in Response to the Court's Inquiry of April 5, 2013, p. 3. This analogy is helpful – while the "strong basis in evidence" test certainly implies a more critical, and less deferential, standard of review than the "substantial evidence test," the substantial evidence test is a question of law for the reviewing court, as Defendants argue should be the case here. This suggestion has some support in persuasive authority. *See, e.g. Contractors Ass'n v. City of Philadelphia*, 91 F.3d 586, 596 (3d Cir. 1996) ("ultimately, whether a strong basis in evidence of past or present discrimination exists, thereby establishing a compelling state interest for the municipality to enact a race-conscious ordinance, is a question of law, subject to plenary review. The same is true of the issue of whether there is a strong basis in evidence for concluding that the scope of the ordinance is narrowly tailored to remedy the identified past or present discrimination")(citations omitted). In any event, whether applying the Plaintiffs' rationale or the Defendants', both reach the same conclusion, as does the trial court, that the issues before the trial court are predominantly issues of law appropriate for summary judgment.

General Assembly is not required to have proof of a certain § 2 violation before drawing districts to avoid § 2 liability but, rather, the trial court is required to defer to the General Assembly's "reasonable fears of, and their reasonable efforts to avoid, § 2 liability." *Vera*, 517 U.S. at 978.

The General Assembly's "reasonable fears" must be based upon strong evidence in the legislative record that three factors, known as the *Gingles* factors, existed in North Carolina when the Enacted Plans were adopted. The *Gingles* factors, which are a mandatory precondition to any § 2 claim against the State, are (1) that a minority group exists within the area affected by the Enacted Plans, and that this group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) that the group is politically cohesive; and (3) that racial bloc voting usually will work to defeat the minority's preferred candidate. *Vera*, *517* U.S. at 978; *Johnson v. De Grandy*, 512 U.S. 997, 1006-09 (1994); *Growe v. Emison*, 507 U.S. 25, 40, 41 (1993); *see also Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). In a §2 lawsuit, once the three *Gingles* factors are established, the trial court must consider the "totality of the circumstances" to determine whether a majority-minority district is appropriate to remedy vote dilution. *Shaw II*, *517* U.S. at 914.[13] In judicial

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[13] None of the Supreme Court's racial gerrymandering decisions have imposed the "totality of the circumstances" requirement upon a state legislature, which suggests that the legislature has discretion to enact majority-minority districts if there is a strong basis in the legislative record of just the three *Gingles* factors. However, in reviewing the record before the General Assembly at the time of the enactment of the Enacted Plans, the trial court has considered whether there was a strong basis in evidence to conclude not only that the *Gingles* factors existed, but also whether there was a strong basis in evidence to

review of the Enacted Plans, the trial court must examine the record before the General Assembly to determine, as a matter of law,[14] whether this strong basis in evidence exists.

The legislative record that existed at the time of the enactment of the Enacted Plans included:

- testimony from lay witnesses at numerous public hearings conducted throughout the state both before and after draft redistricting plans were proposed by the General Assembly;
- testimony and correspondence from representatives of interest groups and
- advocacy organizations, including the Southern Coalition for Social Justice ("SCSJ"), the Alliance for Fair Redistricting and Minority Voting Rights ("AFRAM"), the NC NAACP, Democracy NC, and the League of Women Voters;
- Legal opinions from faculty from the UNC School of Government;
- Scholarly writings regarding voting rights in North Carolina;
- Law review articles submitted to the General Assembly's Redistricting Committee by various individuals or entities;
- Election results for elections conducted through and including 2010;
- An American Community Service survey of North Carolina household incomes, education levels,

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conclude that the "totality of the circumstances" would support the creation of majority-minority districts.

[14] *See* fn. 12, *supra*.

employment and other demographic data by county based upon race;

- An expert report from Dr. Ray Block offered by SCSJ and AFRAM;
- An expert report from Dr. Thomas Brunell, retained by the General Assembly;
- Prior redistricting plans; and
- Alternative redistricting plans proposed by SCSJ and AFRAM, Democratic leaders, and the Legislative Black Caucus ("LBC").[15]

A partial listing of the categories of evidence before the General Assembly is referenced in greater detail in Appendix A of this Judgment. This listing illustrates both the scope and detail of the information before the General Assembly at the time of the passage of the Enacted Plans, as well as the evidentiary strength of the record.

The trial court concludes, as a matter of law, based upon a review of the entire record before the General Assembly at the time of the passage of the Enacted Plans, that the General Assembly had a strong basis in evidence to conclude that each of the *Gingles*

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[15] The alternative plans received by the General Assembly prior to the enactment of the Enacted Plans were as follows: Congressional Fair and Legal, Senate Fair and Legal and House Fair and Legal, all entered into the Legislative Record during floor debate on July 25, 2011 (also referred to as "Fair and Legal" or "F&L"), the Possible Senate Districts and the Possible House Districts, also entered into the Legislative Record during the floor debate on July 25, 2011 (also referred to as "PSD" and "PHD" plans or, alternatively "Legislative Black. Caucus Plans" or "LBC" plans), and Senate, House and Congressional Possible Maps prepared by the AFRAM and the SCSJ, presented at public hearings held on May 9 and June 23, 2011 (also referred to as "SCSJ" maps).

preconditions was present in substantial portions of North Carolina and that, based upon the totality of circumstances, VRA districts were required to remedy against vote dilution. Therefore, the trial court concludes, the General Assembly had a compelling governmental interest of avoiding § 2 liability and was justified in crafting redistricting plans reasonably necessary to avoid such liability.

*b. Ensuring Voting Rights Act §5 Preclearance*

Ensuring preclearance of redistricting plans under § 5 of the VRA can also be a compelling governmental interest. *Vera*, 517 U.S. at 982.[16] Forty counties in North Carolina are "covered jurisdictions" under § 5 of the VRA. Section 5 suspends all changes to a covered jurisdiction's elections procedures, including changes to district lines by redistricting legislation, until those changes are submitted to and approved by the United States Attorney General or a three-judge panel of the United States District Court for the District of Columbia. *Perry v. Perez*, 132 S. Ct. 934, 939 (2012).

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[16] In its June 25, 2013 opinion in *Shelby Co. v. Holder*, 570 U.S._(2013), the Supreme Court struck down § 4 of the Voting Rights Act, holding that its formula could no longer be used as a basis for subjecting jurisdictions to preclearance. This holding has no practical effect upon the outcome of this case because the measure of the constitutionality of the Enacted Plans depends upon the compelling governmental interests *at the time of the enactment* of the Enacted Plans. At the time of enactment in 2011, preclearance by the USDOJ was required of all North Carolina legislative and congressional redistricting plans. Moreover, *Shelby County*, in *dicta*, reaffirms that "§ 2 is permanent, applies nationwide, and is not at issue in this case." *Id*, at No. 12-96, slip op. at 3. Thus, regardless of any retroactive application of *Shelby County* to § 5, the legitimate governmental interest of avoiding § 2 liability remains.

A newly-enacted redistricting plan may not be used until the jurisdiction has demonstrated that the plan does not have a discriminatory purpose or effect, and the newly-enacted plan may not undo or defeat rights afforded by the most recent legally enforceable redistricting plan in force or effect in the covered jurisdiction (the "benchmark" plan). *Riley v. Kennedy*, 553 U.S. 406 (2008); 28 C.F.R. § 51.54(b)(1).

A legislature's efforts to ensure preclearance must be based upon its reasonable interpretation of the legal requirements of § 5 of the VRA, including the effect of a 2006 amendment that clarified that § 5 expressly prohibits "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the *purpose* of or will have the *effect* of diminishing the ability of citizens of the United States on account of race or color . . . *to elect their preferred candidate of choice.*" Pub. L. No. 109-246, § 5, 120 Stat. 577, 580-81 (2006) (emphasis added). This amendment aligned the language of § 5 with the same language in § 2 of the VRA to the extent that both now refer to the ability of minority groups to "elect their preferred candidate of choice." The Supreme Court has recently recognized that the effect of the 2006 amendment to § 5 is that "the bar that covered jurisdictions must clear has been raised." *Shelby County, supra* note 13, at 16-17 (citing *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 336 (2000)).

The trial court concludes, as a matter of law, based upon the review of the entire record before the General Assembly at the time of the passage of the Enacted Plans, that the General Assembly had a strong basis in evidence to conclude that the Enacted Plans must be precleared, and that they must meet the heightened requirements of preclearance under the 2006

amendments to § 5 of the VRA. Therefore, the General Assembly had a compelling governmental interest in enacting redistricting plans designed to ensure preclearance under § 5 of the VRA.[17]

*2. Narrow Tailoring*

The trial court now considers, in light of the foregoing conclusions regarding the existence of compelling governmental interests, whether the Enacted Plans were narrowly tailored to avoid § 2 liability and ensure § 5 preclearance. In other words, in responding to these compelling interests, the General Assembly is not granted *"carte blanche* to engage in racial gerrymandering." *Shaw I*, 509 U.S. at 655. The trial court must "bear in mind the difference between what the law permits, and what it requires." *Id.* at 654. The VRA cannot justify all actions taken in its name, but only those narrowly tailored to give effect to its requirements.

The Plaintiffs contend that the Enacted Plans are not narrowly tailored because:

1. The Enacted Plans contain significantly more VRA districts (i.e. districts intentionally created by the General Assembly as majority-minority districts to avoid § 2 liability or to ensure § 5 preclearance) than reasonably necessary to comply with the VRA (Pl.'s Mem. Supp. Partial Summ. J. 82);

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[17] It has been observed that a compelling interest of a jurisdiction subject to § 5 preclearance is "initially assumed" since the plan cannot be enacted without compliance. The more relevant question is that of narrow tailoring. *See Johnson v. Miller*, 864 F. Supp. at 1382-83.

2. The VRA districts are unnecessarily "packed" with Black voters (Pl.'s Mem. Supp. Partial Summ, J. 84);

3. The VRA districts are placed in geographic locations where there is insufficient evidence of a reasonable threat of § 2 liability (Pl.'s Mem. Supp. Partial Summ. J. 77); and

4. The shape of the VRA districts are non-compact and irregular (Pl.'s Mem. Supp. Partial Summ. J. 85).

The trial court considers each of these contentions in turn.

*a. Did the General Assembly fail to narrowly tailor the Enacted Plans by creating more Voting Rights Act districts than reasonably necessary to comply with the Act?*

Purportedly to avoid VRA § 2 liability and to ensure VRA § 5 preclearance, the General Assembly created majority-minority districts throughout the State. The Plaintiffs draw the trial court's attention to the increased number of such districts compared to prior enacted plans. The Enacted House Plan contains 23 districts with a TBVAP in excess of 50% as compared to 10 such districts in the 2009 House Plan – the last plan in effect before the Enacted House Plan. The Enacted Senate Plan contains 9 districts with a TBVAP in excess of 50% as compared to zero in its predecessor, the 2003 Senate Plan. This seemingly dramatic increase in the number of VRA districts, Plaintiffs contend, would suggest that "one would assume that race relations in North Carolina had to be among the worst in the country, if such extreme racial remedies were required." Pl.'s Mem. Opp'n 44.

However, a closer look at the data is warranted. The following tables compares the Enacted Plans with the alternative plans proffered or supported by the Plaintiffs and, in addition to focusing on the number of districts in prior or competing plans with TBVAP > 50%, also considers the number of districts in each plan where TBVAP is greater than 40%.

**Table 1:** ***Comparison of Number of Senate Districts > 40% TBVAP among all plans***

| | Enacted Plan | 2003 Plan | SCSJ | P&L | LBC |
|---|---|---|---|---|---|
| # of Districts > 50% TBVAP | 9 | 0 | 5 | 1 | 0 |
| # of Districts >40% but <50% TBVAP | 1 | 8 | 4 | 6 | 8 |
| Total # Districts >40 TBVAP | 10 | 8 | 9 | 7 | 8 |

**Table 2:** ***Comparison of Number of House Districts > 40% TBVAP among all plans***

| | Enacted Plan | 2003 Plan | SCSJ | P&L | LBC |
|---|---|---|---|---|---|
| # of Districts > 50% TBVAP | 23 | 10 | 11 | 9 | 10 |
| # of Districts >40% but <50% TBVAP | 2 | 10 | 10 | 11 | 13 |
| Total # Districts >40 TBVAP | 25 | 20 | 21 | 20 | 23 |

These tables show that when comparing the aggregate number of districts with TBVAP > 40% in the Enacted Plan with all other plans, the difference between the plans is not as dramatic. This is significant when taken in the context of the parties' disagreement over what constitutes a lawful VRA district. (*See further infra* § IV(C)(2)(b), discussion regarding cross-over districts (i.e. districts with TBVAP >40%) and majority-minority districts (districts with TBVAP >50%)). All parties, this data suggests, agree that a significant number of VRA districts - however that term is defined - are required in North Carolina. For example, in the proposed SCSJ Senate Plan, the drafters would create 9 VRA Senate

districts, compared to 10 in the Enacted Senate Plan. Likewise, in the proposed LBC plan, the drafters would create 23 VRA districts compared to 25 in the Enacted House Plan. In the trial court's consideration that existed in the legislative record at the time of the enactment of the Enacted Plans, it is compelling that all of the alternative plans propounded or endorsed by the Plaintiffs contain a large number of voting districts created to increase TBVAP so as to provide minority voters with the opportunity to elect their candidate of choice.

The undisputed evidence establishes that the General Assembly, in drafting the Enacted Plans, endeavored to create VRA districts in roughly the same proportion as the ratio of Black population to total population in North Carolina. In other words, because the 2010 census figures established that 21% of North Carolina's population over 18 years of age was "any part Black," the corresponding rough proportion of Senate seats, out of 50 seats, would be 10 seats, and hence 10 VRA Senate districts. Likewise, of the 120 House seats, 21% of those seats would be roughly 25 House seats, and hence 25 VRA districts.

The General Assembly, in using "rough proportionality" as a benchmark for the number of VRA districts it created in the Enacted Plans, relies upon Supreme Court precedent that favorably endorses "rough proportionality" as a means by which a redistricting plan can provide minority voters with an equal opportunity to elect candidates of choice. *League of United Latin Arn, Citizens v. Perry*, 548 U.S. 399, 429-30 (2006) [hereinafter *LULAC*]; *Shaw II*, *517 U.S.* at 916 n.8; *De Grandy*, 512 U.S. at 1000. In *De Grandy*, the Supreme Court said that "no violation of § 2 can be found . . . where, in spite of continuing discrimination and racial bloc voting, minority voters

form effective voting majorities in a number of districts roughly proportional to the minority voters' respective shares in the voting-age population." 512 U.S. at 1013-1015. Where a State's election districts reflect substantial proportionality between majority and minority populations, the Supreme Court explained, such districts would "thwart the historical tendency to exclude [the minority population], not encourage or perpetuate it." [18] *Id.* at 1014. It is reasonable for the General Assembly to rely upon this unequivocal holding of the Supreme Court in drafting a plan to avoid § 2 liability. When the Supreme Court says "no violation of § 2 can be found" under certain circumstances, prudence dictates that the General Assembly should be given the leeway to seek to emulate those circumstances in its Enacted Plans.

Drafting districts so as to achieve "rough proportionality" is also favorably endorsed by Plaintiffs' retained expert, Dr. Theodore S. Arrington,

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[18] The Supreme Court distinguishes "rough proportionality," as it is used here to "link[] the number of majority-minority voting districts to minority members' share of the relevant population" from the constitutionally-suspect concept of "proportional representation" which suggests a "right to have members of a protected class elected in numbers equal to their proportion in the population." *De Grandy*, 512 U.S. at 1013-1015 ("The concept is distinct from the subject of the proportional representation clause of § 2, which provides that 'nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.' 42 U.S.C. § 1973(b). This proviso speaks to the success of minority candidates, as distinct from the political or electoral power of minority voters. (citations omitted.) And the proviso also confirms what is otherwise clear from the text of the statute, namely, that the ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race." *Id.* at n.11).

an expert with over 40 years in the field of districting, reapportionment and racial voting patterns. In deposition testimony, Dr. Arrington said:

> [I]f I'm sitting down and somebody asks me to draw districts for North Carolina that will be good districts, I would want to draw districts in such a way as blacks have a reasonable opportunity to get something close to proportion of the seats in the General Assembly to reflect their proportion of the population.

Arrington Dep., 30-31. Moreover, Dr. Arrington, who is often requested by the Department of Justice to draw illustrative redistricting maps in the § 5 preclearance process, was not aware of a single instance "where a legislative plan has provided black voters with roughly proportional number of districts for the entire state where that plan has been found to discriminate against black voters." Arrington Dep., 192.

As such, based upon the law and the undisputed facts, and allowing for the limited degree of leeway that permits the General Assembly to exercise political discretion in its reasonable efforts to address compelling governmental interests, the trial court finds that the General Assembly had a strong basis in evidence for concluding that "rough proportionality" was reasonably necessary to protect the State from anticipated liability under § 2 of the VRA and ensuring preclearance under § 5 of the VRA. The trial court further finds that, notwithstanding the racial classification inherent in "rough proportionality," the Enacted Plans substantially address the threat of anticipated § 2 liability and challenges to preclearance under § 5 of the VRA. The trial court therefore concludes that the

number of VRA districts created by the General Assembly in the Enacted Plans is not inconsistent with the General Assembly's obligation to narrowly tailor the plans under strict scrutiny.

*b. Did the General Assembly fail to narrowly tailor the Enacted Plans by "packing" the Voting Rights Act Districts?*

The trial court next considers whether the majority-minority districts created in the Enacted Plans are "packed" with Black voters to a greater degree than would be necessary under a narrow tailoring of the Plans to meet the compelling governmental interests of avoiding § 2 liability and obtaining preclearance under § 5 of the VRA. This issue is best understood by re-examining Tables 1 and 2 above, and noting that one of the most significant differences between the Enacted Plans and all other plans is the greater frequency of districts in the Enacted Plans with TBVAP > 50%, whereas the predecessor plans, as well as all proposed plans, have significantly fewer districts with TBVAP >50%, but significantly greater numbers of districts with TBVAP between 40% and 50%.

Plaintiffs cast this issue as follows: "Does § 2 or § 5 of the VRA require the challenged districts to be drawn as majority-minority districts in which more than 50% of the population in the district was Black?" Pls.' Mem. Opp'n 31. Plaintiffs urge the trial court to answer this question "no" and find, on the contrary, that the General Assembly's insistence that 23 of the House districts and 9 of the Senate districts in the Enacted Plans have >50% TBVAP exceeds the narrow tailoring required to address compelling governmental interests.

Specifically, the Plaintiffs further argue that the General Assembly should have been more exacting in

determining whether a district created to avoid VRA liability should be populated with >50% TBVAP, or whether liability could be avoided, and the minority-preferred candidate elected, by instead creating the same district with less than 50% TBVAP. The Plaintiffs argue that while a remedy of > 50% TBVAP may be necessary in certain places where polarization between the races is particularly acute, there are some locales – notably those areas where some percentage of white voters consistently "cross-over" and vote for Black candidates – where some VRA remedy is still necessary, but the remedy need not be a district with >50% TBVAP. Rather, the Plaintiffs urge that the General Assembly should have determined some appropriate lesser concentration of Black voters – enough to permit Black voters the opportunity to elect the candidates of their choice, but not too many – and that the General Assembly's failure to do so renders the Enacted Plans unconstitutional.

Plaintiffs' argument on this point is not in accord with the appellate court precedents that bind this trial court.[19] Specifically, in *Pender County*, 361 N.C. 491, the N.C. Supreme Court considered the 2003 version of House District 18. House District 18 was drawn by the General Assembly in its 2003 redistricting plan with 3936% Black voting age population. The district included portions of Pender County and an adjoining

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[19] Dr. Theodore Arrington, an expert retained by Plaintiffs, explained his view on this topic as follows: "Some court decisions seem to indicate that a remedy for a violation of Section 2 or an attempt to avoid retrogression under Section 5 requires the construction of districts in which a majority of the voting age population or registered voters are minority – a so-called 'minority-majority' district. I do not believe that this is the best standard." Arrington Dep. 78. Dr. Arrington also testified that: "Of course, to make it different the Congress would need to change it." *id.* at 80.

county. Keeping Pender County whole would have resulted in a Black voting age population of 35.33%. The legislators' rationale was that splitting Pender County gave Black voters a greater opportunity to join with white voters to elect the minority group's candidate of choice, while leaving Pender County whole would have violated § 2 of the Voting Rights Act. Pender County and others filed suit against the State (and other officials), alleging that the redistricting plan violated the Whole County Provision of the N.C. Constitution.[20] The State answered that dividing Pender County was required by § 2. *Bartlett v. Strickland*, 556 U.S. 1, 7-8 (2009) [hereinafter *Strickland*].

The State's position, in defending House District 18 as drawn, was that the language of both *Gingles* and § 2 did not necessarily require the creation of majority-minority districts, but allowed for other types of legislative districts, such as coalition, crossover, and influence districts. The State considered House District 18 to be an "effective minority district" that functioned as a "single-member crossover district" in which the total Black voting age population of 39.36% could predictably draw votes from a white majority to elect the candidate of its choice, and argued that as such, the district, as drawn, was permitted by § 2 and *Gingles*. *Pender County*, *supra* at 502.

The plaintiffs in *Pender County*, on the other hand, contended that a minority group must constitute a numerical majority of the voting population in the area under consideration before § 2 of the VRA requires the creation of a legislative district to prevent dilution of the votes of that minority group. They pointed to the wording of the first *Gingles*

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[20] *See further infra* § V.

precondition, that says a minority group must be "sufficiently large and geographically compact to constitute a *majority* in a single-member district," *Gingles*, 478 U.S. at 50 (emphasis added), and claimed this language permits only majority-minority districts to be formed in response to a § 2 claim. *Fender County*, 361 N.C. at 501.

The N.C. Supreme Court agreed with the *Fender County* plaintiffs, and found their position to be "more logical and more readily applicable in practice." *Id.* at 503. The Court concluded that "when a district must be created pursuant to Section 2, it must be a majority-minority district."[21] *Id.* Recognizing that the majority-minority requirement could be considered a "bright-line" rule, the Court reasoned as fo11ows:

> This bright line rule, requiring a minority group that otherwise meets the *Gingles* preconditions to constitute a numerical majority of citizens of voting age, can be applied fairly, equally, and consistently throughout the redistricting process. With a straightforward and easily administered standard, Section 2 legislative districts wi11 be more uniform and less susceptible to ephemeral political voting patterns, transitory population shifts, and questionable predictions of future voting trends. A bright line rule for the first *Gingles* precondition "promotes ease of application without distorting the statute or the intent underlying it."

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[21] A "majority-minority" district was defined by the Court as "a district in which >50% of the population in the district are voting age citizens of a specific minority group." *Id.* at 501

> In addition, a bright line rule provides our General Assembly a safe harbor for the redistricting process. Redistricting should be a legislative responsibility for the General Assembly, not a legal process for the courts. Without a majority requirement, each legislative district is exposed to a potential legal challenge by a numerically modest minority group with claims that its voting power has been diluted and that a district therefore must be configured to give it control over the election of candidates. In such a case, courts would be asked to decide just how small a minority population can be and still claim that Section 2 mandates the drawing of a legislative district to prevent vote dilution.

*Id.* at 504-505 (citation omitted).

The Court concluded its opinion with this directive to future General Assemblies:

> Any legislative district designated as a Section 2 district under the current redistricting plan, and any future plans, must either satisfy the numerical majority requirement as defined herein, or be redrawn in compliance with the Whole County provision of the Constitution of North Carolina and with *Stephenson I* requirements.

*Id.* at 510.

The United States Supreme Court affirmed the N.C. Supreme Court's *Pender County* ruling. In its plurality opinion, the Supreme Court held that the General Assembly's contention that § 2 of the VRA required that House District 18 be drawn as a crossover district with a minority population of 39.26% must be rejected.

*Strickland*, 556 U.S. at 14. Rather, districts created to avoid § 2 liability must be majority-minority districts that contain a numerical, working majority of the voting age population of a minority group. *Id.* at 13, 15. The Court went on to note that this majority-minority rule found support not only in the language of § 2 of the VRA, but also in the need for workable standards and sound judicial and legislative administration:

> The [majority-minority] rule draws clear lines for courts and legislatures alike. The same cannot be said of a less exacting standard that would mandate crossover districts under § 2. Determining whether a § 2 claim would lie i.e. determining whether potential districts could function as crossover districts – would place courts in the untenable position of predicting many political variables and tying them to race-based assumptions. The judiciary would be directed to make predictions or adopt premises that even experienced polling analysts and political experts could not assess with certainty.

*Id.* at 17-18. The Supreme Court continued:

> The majority-minority rule relies upon an objective, numerical test: Do minorities make up more than 50 percent of the voting-age population in the relevant geographic area? That rule provides straightforward guidance to courts and to those officials charged with drawing district lines to comply with § 2. Where an election district could be drawn in which minority voters form a majority but such a district is not drawn, or where a majority-minority district is cracked by assigning some voters elsewhere, then–

> assuming the other *Gingles* factors are also satisfied–denial of the opportunity to elect a candidate of choice is a present and discernible wrong . . . . .

*Id.* at 18 (citations omitted).

The Supreme Court added that its "holding that § 2 does not require crossover districts does not consider the permissibility of such districts as a matter of legislative choice or discretion." The Court cautioned that its ruling "should not be interpreted to entrench majority-minority districts by statutory command, for that, too, could pose constitutional concerns. *See Miller v. Johnson*, 515 U.S. 900 (1995); *Shaw I*, 509 U.S. 630. States that wish to draw crossover districts are free to do so where no other prohibition exists." *Strickland, supra* at 23-24. But the ultimate holding of the Court is inescapable – when the State has a strong basis in evidence to have a reasonable fear of § 2 liability, the State must be afforded the leeway to avail itself of the "bright line rule" and create majority-minority districts, rather than cross-over districts, in those areas where there is a sufficiently large and geographically compact minority popu-lation and racial polarization exist.

Plaintiffs express grave concerns regarding the public policy implications of a bright-line 50% rule that they fear "balkanizes" Black voters and white voters and discourages cross-over coalitions among the races. The Plaintiffs' concerns parallel the same concerns voiced by the dissenting justices in the *Strickland* case. Justice Souter, writing for the dissenters, said that "the plurality has eliminated the protection of § 2 for the districts that best vindicate the goals of the State, and has done all it can to force the States to perpetuate racially concentrated districts, the quintessential manifestations of race

consciousness in American politics." *Strickland*, 556 U.S. at 44 (Souter, J., dissenting). Justice Ginsberg, also dissenting, succinctly summed up her views by stating that: "The plurality's interpretation of § 2 of the Voting Rights Act of 1965 is difficult to fathom and severely undermines the statute's estimable aim. Today's decision returns the ball to Congress' court." *Id.* (Ginsberg, J., dissenting).

But even in these dissents, the position of the General. Assembly in defending the Enacted Plans is strengthened. Justice Souter, in his dissent, predicted that based upon the *Strickland* plurality opinion:

> A State like North Carolina faced with the plurality's opinion, whether it wants to comply with § 2 or simply to avoid litigation, wi11, therefore, have no reason to create crossover districts. Section 2 recognizes no need for such districts, from which it follows that they can neither be required nor be created to help the State meet its obligation of equal electoral opportunity under § 2. And if a legislature were induced to draw a crossover district by the plurality's encouragement to create them voluntarily, . . . it would open itself to attack by the plurality based upon that the pointed suggestion that a policy favoring crossover districts runs counter to *Shaw*, *The plurality has thus boiled § 2 down to one option: the best way to avoid suit under §2, and the only way to comply with § 2, is by drawing district lines in a way that packs minority voters into majority-minority districts, probably eradicating crossover districts in the process.*

*Id.* at 43 (Souter, J., dissenting) (emphasis added) (citations omitted). The undisputed evidence

establishes that the General Assembly, in crafting the Enacted Plans, interpreted the law of the land just as Justice Souter did – in its effort to avoid liability under § 2 of the VRA, the General Assembly eschewed crossover districts and, applying the bright line test endorsed by the N.C. Supreme Court in *Pender County* and the U.S. Supreme Court in *Strickland*, opted for the safe-harbor from § 2 liability by creating majority-minority districts with >50% TBVAP. In the context of narrow tailoring, the General Assembly's understanding of the law – as reflected in the Enacted Plans it created – cannot be considered unreasonable, and the trial court is required to give leeway to the General Assembly's "reasonable efforts to avoid § 2 liability." *Vera*, 517 U.S. at 977.

As such, based upon the law and the undisputed facts, and allowing for the limited degree of leeway that permits the General Assembly to exercise political discretion in its reasonable efforts to address compelling governmental interests, the trial court finds that the General Assembly had a strong basis in evidence for concluding that it was reasonably necessary to endeavor to create all VRA districts within the Enacted Plans with 50% TBVAP to protect the state from anticipated liability under § 2 of the VRA and to ensure preclearance under § 5 of the VRA. [22] The trial court further finds that, notwithstanding the racial classification inherent in the creation of >50% TBVAP VRA districts, the

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[22]With respect to ensuring § 5 preclearance, Plaintiffs' retained expert, Dr. Arrington, testified that when he consults on behalf of the USDOJ and draws illustrative plans in their preclearance process, "[the USDOJ] ask me to draw it specifically at more than 50%, and the reason for that is that that means there's no question . . . so that eliminates one legal question about satisfying *Gingles* one, the first *Gingles* prong." Arrington Dep. 191.

Enacted Plans substantially address the threat of anticipated § 2 liability and challenges to preclearance under § 5 of the VRA. The trial court therefore concludes that the creation of >50% TBVAP VRA districts by the General Assembly in the Enacted Plans is not inconsistent with the General Assembly's obligation to narrowly tailor the plans under strict scrutiny.

c. *Did the General Assembly fail to narrowly tailor the Enacted Plans by placing the Voting Rights Act districts in geographic locations where there is insufficient evidence of a reasonable threat of § 2 liability?*

As the trial court concluded above in § IV(C)(1)(a), at the time of the enactment of the Enacted Plans, the General Assembly had strong evidence in the legislative record that each of the *Gingles* factors was present in substantial portions of North Carolina and that, based upon the totality of circumstances, majority-minority voting districts were required to remedy against vote dilution. Narrow tailoring requires that, to the extent that the General Assembly created VRA districts as part of its efforts to avoid § 2 liability, the VRA districts be located only in those geographic areas where a remedy against vote-dilution would be reasonably required. Plaintiffs challenge the geographic location of some VRA districts in the Enacted Plan, arguing that "for defendants to justify any majority black district as being required by Section 2, they must satisfy the third prong of *Gingles*, by establishing that white voters in that district - not somewhere else or in the state at large - vote 'sufficiently as a bloc to enable [them]. _usually to defeat the minority's preferred candidate.'" *Gingles*, 478 U.S. at 50-51; *see also, Shaw II*, *517* U.S. at 917 ("if a § 2 violation is proved for a

particular area, . . . [t]he vote-dilution injuries suffered by these persons are not remedied by creating a safe majority-black district somewhere else in the State."); Pl.'s Mem. Supp. Partial Summ. J. 77. To consider this issue, the trial court must consider whether the area affected by each VRA district displays a sufficient degree of "racial polarization" to justify a narrowly tailored remedy of a safe majority-black district at that location.

"Racial polarization" refers to the combined effect of the second and third *Gingles* factors, that is, political cohesion by the minority and white bloc voting by the white majority. *Old Person v. Cooney*, 230 F.3d 1113, 1123 (9th Cir. 2000) (citing *Ruiz v. City of Santa Maria*, 160 F.3d 543, 551 (1998) (citing *Gingles*, 478 U.S. at 56)). Polarized voting occurs when minority and white communities cast ballots along racial or language minority lines, voting in blocs. *Texas v. United States*, 831 F. Supp. 2d 244 (D.D.C. 2011) (quoting H.R. Rep. No. 109-478, at 34 (2006)). An expert relied upon by the Plaintiffs, Dr. Ray Block, whose report *Racially Polarized Voting in 2006, 2008 and 2010 in North Carolina State Legislative Contests* was proffered to the General Assembly at its public hearings prior to the enactment of the Enacted Plans, defines "racial polarization" as:

> The proportion of black voters who prefer a black candidate is noticeably higher in an electoral contest as compared to those of non blacks, and the proportion of black candidates who win elections is noticeably higher in majority minority districts than in non majority minority districts. . . . Racially polarized voting can be identified as occurring when there is a consistent relationship

> between the race of a voter and the way in which she/he votes.

Rucho Aff. Ex. 8, at 3 (Jan. 19, 2012) It is undisputed that racially polarized voting continues to be a "pervasive pattern" of North Carolina politics. Arrington Dep. 93.

Using these definitions, the trial court has concluded that the determination of whether there is a "consistent relationship between the race of a voter and the way in which she/he votes" sufficient to "usually defeat the minority's preferred candidate" in each of the locations selected by the General Assembly for the establishment of a VRA district is an issue of fact that must be determined by the trial court through an evaluation of evidence, and not as a matter of law through summary judgment. *East Jefferson Coalition for Leadership & Dev. v. Parish of Jefferson* 926 F.2d 487, 491 (5th Cir. 1991) ("Each *Gingles* precondition is an issue of fact. . . An ultimate finding of vote dilution is a question of fact . . ."). To determine this factual issue, the trial court received evidence through witness testimony and designation of the record at a bench trial conducted June 5-6, 2013, on the issue of:

> Assuming application of a strict scrutiny standard and, in considering whether the Enacted Plans were narrowly tailored, was each challenged VRA district drawn in a place where a remedy or potential remedy for racially polarized voting was reasonable for purposes of preclearance or protection of the State from vote dilution claims under the Constitution or under § 2 of the VRA?

*Order of the Trial Ct.*, May 13, 2013.

The Findings of Fact of the trial court on this issue are set out in Appendix A attached hereto and incorporated by reference.

Based upon the law and the facts as found by the trial court, and allowing for the limited degree of leeway that permits the General Assembly to exercise political discretion in its reasonable efforts to address compelling governmental interests, the trial court finds that the General Assembly had a strong basis in evidence for concluding that the each of the VRA districts in the Enacted Plans were placed in a location that was reasonably necessary to protect the State from anticipated liability under § 2 of the VRA and ensuring preclearance under § 5 of the VRA. The trial court further finds that, notwithstanding the racial classification inherent in the creation and placement of VRA districts, the Enacted Plans substantially address the threat of anticipated § 2 liability and challenges to preclearance under § 5 of the VRA. The trial court therefore concludes that the placement of the VRA Districts by the General Assembly in the Enacted Plans is not inconsistent with the General Assembly's obligation to narrowly tailor the plans under strict scrutiny.

*d. Did the General Assembly fail to narrowly tailor the Enacted Plans by crafting irregularly shaped and non-compact Voting Rights Act districts or by otherwise disregarding traditional redistricting principles such as communities of interest and precinct boundaries?*

The Plaintiffs contend that VRA districts in the Enacted Plans, even if justified by the compe11ing governmental interests of avoiding § 2 liability or ensuring preclearance under § 5 of the VRA, are not narrowly tailored because they are drawn with a

disregard of traditional redistricting principles resulting in lack of compactness, irregular shapes, and too many split counties and split precincts.

The Supreme Court has held that a "district drawn in order to satisfy § 2 must not subordinate traditional districting principles to race substantially more than is 'reasonably necessary' to avoid § 2 liability." *Vera*, *517* U.S. at 979. On the other hand, the same Court said that narrow tailoring does not require a district have the "least possible amount of irregularity in shape, making allowances for traditional districting criteria" because that standard would be "impossibly stringent." *Id.* at 977. "Districts not drawn for impermissible reasons or according to impermissible criteria may take any shape, even a bizarre one," provided that the bizarre shapes are not "attributable to race-based districting unjustified by a compelling interest." *Id.* at 999 (Kennedy, J. concurring). In sum, a VRA district that is based on a reasonably compact minority population, that also takes into account traditional redistricting principles, "may pass strict scrutiny without having to defeat rival compact districts designed by plaintiffs' experts in endless 'beauty contest.'" *Id.* at 977. The General Assembly, even under strict scrutiny, must be accorded a "limited degree of leeway" in tailoring its redistricting plan. *Id.*

Another three judge panel, in considering this same legal issue in Georgia, said that:

> We agree with the North Carolina court that the Supreme Court will probably not adopt a definition of "narrow tailoring" in the redistricting context that requires consideration of whether the challenged plan deviates from "traditional" notions of compactness, contiguity, and respect for political subdivisions to a greater degree than

> is necessary to accomplish the states compelling purpose. *Shaw v. Hunt*, supra, at 87. Such a standard would elevate to constitutional status that which was intended only as a barometer for determining whether a district adequately serves its constituents. Observance of those traditional principles is also difficult to judge at the exacting level required for a narrow tailoring determination, and such judging would force the judiciary to meddle with legislative prerogatives to an undesirable degree. Nothing, however, precludes the Court from considering traditional districting principles as guideposts in a narrow tailoring analysis; while not required, they are potentially useful indicators of where the legislature could have done less violence to the electoral landscape.

*Johnson v. Miller*, 864 F. Supp. at 1387.

The judicial determination of whether the degree to which a redistricting plan comports with "traditional notions of redistricting" such as compactness, contiguity, and respect for political subdivisions is a difficult task because of the subjective nature of each of these concepts. There is no litmus test for these concepts; for example, "compactness" has been described as "such a hazy and ill-defined concept that it seems impossible to apply it in any rigorous sense in matters of law." *Id.* at 1388. *See also Karcher v. Daggett*, 462 U.S. 725, 756 (1983) (stating that compactness requirements have been of limited use because of vague definitions and imprecise application). (See further, discussion *infra* in § VI regarding equal protection claims associated with compactness and split precincts).

The trial court is cognizant of its duty, under a narrow tailoring analysis, to examine the "fit" of a remedy against the "ends" to ensure that the Enacted Plans are the least restrictive means of advancing legitimate governmental interests. *Boos v. Barry*, 485 U.S. 312, 329 (1988); *Wygant*, 476 U.S. at 280 n.6. In so doing, the trial court is obligated to consider whether lawful alternatives and less restrictive means could have been used, regardless of whether the General Assembly considered those alternatives. *Boos v. Barry*, 485 U.S. at 329; *Wygant*, 476 U.S. at 280 n.6. But the obligation of the trial court to consider all lawful alternatives must be harmonized with the Plaintiffs' burden of persuasion; even with the heavy burden of production resting upon the General Assembly, the Plaintiffs have some obligation to persuade the trial court that lawful alternatives in fact exist that could be compared in some meaningful way to the Enacted Plans and that, after such comparison, do "less violence to the electoral landscape." *Johnson v. Miller*, 864 F. Supp. at 1387 n.40. The trial court cannot exhaust "every conceivable race-neutral alternative," *Fisher v. Univ. of Texas*, *supra.* at slip op. p. 10, to discern whether a hypothetical alternative plan exists that better conforms with traditional notions of redistricting, and the Plaintiffs have failed to persuade the trial court that one exists.

Plaintiffs' arguments are not persuasive because Plaintiffs have not produced alternative plans that are of value to the trial court for comparison in this narrow tailoring analysis.[23] None of the alternative plans

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[23] To the extent that the trial court's application of strict scrutiny of the Enacted Plans is too stringent a standard of review (see, *supra* § IV(B)) and if the trial court accepted as fact, as the Supreme Court has done previously done, and the Plaintiffs admit, a high degree of correlation between black votes

proposed or endorsed by the Plaintiffs contain VRA districts in rough proportion to the Black population in North Carolina. None of the alternative plans seek to comply with the General Assembly's reasonable interpretation of *Strickland* by populating each VRA district with >50% TBVAP. None of the alternative plans comply with the N.C. Supreme Court's mandate in *Stephenson v. Bartlett* to "group[ the minimum number of whole, contiguous counties necessary to comply with the at or within plus or minus five percent 'one-person, one-vote' standard." 355 N.C. 354, 384 (2002) [hereinafter *Stephenson I*], (see § V, *infra*, regarding the Whole County Provisions). As such, the trial court is left to speculate that a redistricting plan exists – one that protects the State from § 2 liability, ensures § 5 preclearance, and accomplishes all of the legitimate legislative objectives of the General Assembly, including political gain, protection of

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and Democratic votes in North Carolina (*See Hunt v. Cromartie*, 526 U.S. 541, 549-50 (1999) [hereinafter *Cromartie I*]; *Cromartie II*, 532 U.S. at 251, 257-58; Arrington Dep. 58-60), this issue would be foreclosed by the Supreme Court's ruling in *Cromartie II*, that held:

> We can put the matter more generally as follows: In a case such as this one where majority-minority districts (or the approximate equivalent) are at issue and where racial identification correlates highly with political affiliation, the party attacking the legislatively drawn boundaries must show at the least that the General Assembly could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles. That party must also show that those districting alternatives would have brought about significantly greater racial balance.

532 U.S. at 258.

incumbency, and population equalization – yet appears, on some subjective measure, to be more "compact" or less "irregular."

Moreover, Plaintiffs' retained expert, Dr. Arrington, seems to suggest that traditional notions of redistricting have little practical relevance, or little real benefit, in considering whether legislative districts are narrowly tailored. He says, in deposition testimony:

> There is no evidence from political science research that the shape of the district makes any difference at all. . . It doesn't increase the extent to which voters know who they're voting for. It doesn't affect the extent to which candidates can campaign effectively. It doesn't . . . necessarily affect either the campaigning or the voting. It simply has no effect as such. Shape has little or nothing to do with that. That has to do with other things. And so to make the decision that a district is okay or not okay on the basis of shape is leading us in the wrong direction.

Arrington Dep. 119. Likewise, regarding respecting communities of interest as a traditional notion of redistricting, Dr. Arrington says:

> Anyone who wants districts drawn differently than they were or is advocating a particular set of districts will undoubtedly argue, whether they have good reason to do so or not, that their districts define a community of interest. Because community of interest can mean almost anything one chooses, it is rarely operationalized in a fashion to make it useful in either drawing or evaluating districts.

*Id.* at 99-100. Simply put, the trial court is not persuaded, and cannot itself discern, that a lack of respect for traditional notions of redistricting can be shown in the Enacted Plans, or even if present to some extent, is sufficient to defeat the obligation of the General Assembly to narrowly tailor the VRA districts.

As such, based upon the law and the undisputed facts, and allowing for the limited degree of leeway that permits the General Assembly to exercise political discretion in its reasonable efforts to address compelling governmental interests, the trial court finds that the General Assembly had a strong basis in evidence for concluding that the VRA districts in the Enacted Plans, as drawn, were reasonably necessary to protect the State from anticipated liability under § 2 of the VRA and ensuring preclearance under § 5 of the VRA. The trial court further finds that, notwithstanding the racial classification inherent in the VRA districts, as drawn, the Enacted Plans substantially address the threat of anticipated § 2 liability and challenges to preclearance under § S of the VRA. The trial court therefore concludes that the VRA districts, as drawn in the Enacted Plans, are sufficiently compact and regular, and are not inconsistent with the General Assembly's obligation to narrowly tailor the plans under strict scrutiny.

3. *NC-NAACP Plaintiffs' Equal Protection claim of diminution of political influence.*

In Claims for Relief 9 through 11 of the NAACP Plaintiffs' Amended Complaint, the Plaintiffs allege that in voting districts adjoining to those created in the Enacted Plans as VRA Districts, Black voters suffer a diminution of political influence. The Plaintiffs contend that by creating VRA districts with >50% TBVAP, Black voters were siphoned from

adjoining counties, thereby lessening the political influence of the Black voters in those adjoining counties. The NAACP Plaintiffs contend this is a denial of equal protection under the United States and North Carolina constitutions.

The trial court concludes that this claim is not supported by prevailing law. No N.C. Supreme Court or United States Supreme Court decision has ever found a legislative or congressional redistricting plan unconstitutional because it deprived a group of plaintiffs of political influence. Indeed, the United States Supreme Court has warned against the constitutional dangers underlying Plaintiffs' influence theories. In *LULAC*, the Court rejected an argument that the § 2 "effects" test might be violated because of the failure to create a minority "influence" district. The Court held that "if Section 2 were interpreted to protect this kind of influence, it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions." *LULAC*, 548 U.S. at 445-46 (citing *Georgia v. Ashcroft*, 539 U.S. 461, 491 (2003) (Kennedy, J., concurring)). Recognizing a claim on behalf of Black voters for influence or crossover districts "would grant minority voters 'a right to preserve their strength for the purposes of forging an advantageous political alliance,'" a right that is not available to any other voters. *Strickland*, *556 U.S.* at 15 (citing *Hall v. Virginia*, 385 F.3d 421, 431 (4th Cir. 2004), *cert. denied*, 544 U.S. 961 (2005)). This argument also raises the question of whether such a claim would itself run afoul of the equal protection guarantees of the Fourteenth Amendment and of the North Carolina Constitution. Nothing in federal law "grants special protection to a minority group's right to form political coalitions." *Strickland*, 556 U.S. at 15. Nor does

federal law grant minority groups any right to the maximum possible voting strength. *Id.* at 15-16.

Thus, as a matter of law, the trial court concludes that the Plaintiffs' claims of denial of equal protection premised upon diminished influence of Black voters in districts adjoining VRA districts must be denied.

*D. Did racial motives predorninate in the creation of the Non-Voting Rights Act districts?*

As discussed above by the trial court in § IV(B), strict scrutiny is only the appropriate level of scrutiny for legislatively enacted redistricting plans when Plaintiffs establish that "all other legislative districting principles were subordinated to race and that race was the predominant factor motivating the legislature's redistricting decision." *Vera*, 517 U.S. at 959. The districts must be unexplainable on grounds other than race, and it must be established that the legislature neglected all traditional redistricting criteria such as compactness, continuity, respect for political subdivisions and incumbency protection. *Id.* For the 26 VRA districts created in the three Enacted Plans, the trial court concluded, for the purposes of analysis, that strict scrutiny was appropriate because the General Assembly's predominant motive was to create each of those VRA districts with >50% TBVAP and to create a sufficient number of VRA districts to achieve "rough proportionality." However, four districts that were not created by the General Assembly as VRA districts were also challenged by the Plaintiffs as being the product of racial gerrymander – the 12th and 4th Congressional Districts, Senate District 32, and House District 54. As to each of these four districts, for strict scrutiny to apply the trial court must make inquiry into whether race was the General Assembly's predominant motive.

"The legislature's motivation is itself a factual question." *Hunt v. Cromartie*, 526 U.S. 541, 549 (U.S. 1999) [hereinafter *Cromartie I*] (citing *Shaw II*, 517 U.S. at 905); *Miller v. Johnson*, 515 U.S. at 910. As such, determination of this issue is not appropriate for summary judgment, but instead requires the consideration and weighing of evidence by the trial court. To determine this factual issue, the trial court received evidence through witness testimony and designation of the record at a bench trial conducted June 5-6, 2013, on the issue of:

> For six specific districts (Senate Districts 31 and 32, House Districts 51 and 54 and Congressional Districts 4 and 12 none of which is identified as a VRA district), what was the predominant factor in the drawing of those districts? [24]

*Order of the Trial Ct.*, May 13, 2013.

The Findings of Fact of the trial court on this issue are set out in Appendix B attached hereto and incorporated by reference.

Based upon these findings of fact, the trial court concludes that the shape, location and composition of the four non-VRA districts challenged by the Plaintiffs as racial gerrymanders was dictated by a number of factors, which included a desire of the General Assembly to avoid § 2 liability and to ensure preclearance under § 5 of the VRA, but also included equally dominant legislative motivations to comply with the Whole County Provision, to equalize

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[24] Although Senate District 31 and House District 51 were not challenged by the Plaintiffs as racial gerrymanders, they adjoin the non-VRA districts that were challenged by the Plaintiffs, and hence the trial court received evidence on the General Assembly's motivation in creating these two districts as well.

population among the districts, to protect incumbents, and to satisfy the General Assembly's desire to enact redistricting plans that were more competitive for Republican candidates than the plans used in past decades or any of the alternative plans.

Based upon the foregoing, the trial court concludes that the appropriate standard of review for the trial court's consideration of the four non-VRA districts is not strict scrutiny, but instead the "rational relationship" review. *Wilkins v. West*, 264 Va. 447, 467 (2001). Under the rational relationship test, the challenged governmental action must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the action.'" *See generally, e.g. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 544 (3d Cir. 2011). The trial court also concludes that the General Assembly has articulated a reasonably conceivable state of facts, other than a racial motivation, that provides a rational basis for creating the non-VRA districts as drawn in the Enacted Plans.

The trial court further concludes, based upon the undisputed record,[25] that in North Carolina, racial identification correlates highly with political affiliation. *Crornartie II*, 532 U.S. at 242. The Plaintiffs have not proffered, as they must in this instance, *Id.* at 258, any alternative redistricting plans that show that the General Assembly could have met its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles, and that any such alternative plan would have brought about significantly greater racial balance. *Id.* (emphasis added). The Plaintiffs have failed to meet their burden of persuasion that

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[25] *See* fn. 23, *supra*.

alternative plans could achieve the same lawful objectives. Therefore, the Plaintiffs' challenge to the non-VRA districts must fail.

Thus, to summarize, in considering the over-arching issue of whether the challenged districts are a racial gerrymander that violate the equal protection clauses of the United States Constitution or the North Carolina Constitution, the trial court has reviewed each district created by the General Assembly, For those districts created as VRA districts, the trial court has applied strict scrutiny, and has found as a matter of law that a strong basis in evidence supported the enactment of redistricting plans designed to protect the State from § 2 liability and to ensure preclearance under § 5. Further, the trial court has found, based upon a strong basis in evidence in the record, and according the General Assembly a limited degree of leeway, that the Enacted Plans are narrowly tailored to meet these compelling governmental interests. To the extent that the most exacting level of review, strict scrutiny, is not warranted by the facts of this case, the trial court concludes that under a lesser standard of review, such as a rational relationship test, the creation of the VRA districts as drawn was supported by a number of rational bases. For those districts in the Enacted Plans that are not VRA districts, the trial court finds, based upon the evidence before it, that race was not the predominant motive in the creation of those districts and thus, under a rational relationship standard of review, the trial court finds that the General Assembly had a rational basis for creating the non-VRA districts as drawn. Therefore, the trial court concludes that the Plaintiffs' equal protection claims associated with racial gerrymandering must fail.

## V. DO THE ENACTED SENATE AND HOUSE PLANS VIOLATE THE WHOLE COUNTY PROVISIONS OF THE NORTH CAROLINA CONSTITUTION? *(Dickson amended complaint, Claims 11-16; NAACP amended complaint Claims 4-5)*

The Plaintiffs contend that the Enacted Senate and House Plans violate the Whole County Provisions ("WCP") of the North Carolina Constitution. The language of the WCP is alluringly simple: Article II, § 3(3) simply says "no county shall be divided in the formation of a senate district, and Article II, § 5(3) similarly says "no county shall be divided in the formation of a representative district." However, because an inflexible application of the plain language of the WCP would violate federal law mandates that pre-empt state law – notably the Voting Rights Act and the one-person, one-vote principle – the N.C. Supreme Court, in *Stephenson I*, 355 N.C. 354, harmonized the WCP with controlling federal law so as "to give effect to the intent of the framers of the organic law and of the people adopting it." *Id.* at 370.

The undisputed evidence of record establishes that the General Assembly, in its Enacted Senate and House Plans, endeavored to "group the minimum number of counties necessary to comply with the one person, one vote standard into clusters of counties." Pl.'s Mem. Supp. Partial Summ. J. 82. The Plaintiffs, on the other hand, endorsed and proposed alternative House and Senate plans that yielded a fewer number of split counties, and consequently more counties kept whole, than the Enacted Plans. However, the Plaintiffs' plans did not adhere strictly to the rubric of creating clusters with minimum numbers of counties. Plaintiffs urge that the number of counties split ought

to be the standard by which compliance with the WCP is measured.

In *Stephenson I*, the N.C. Supreme Court articulated the criteria that must be followed by the General Assembly to give effect to the requirements of the WCP while reconciling them with the requirements of superseding federal law. These criteria are set out by the Supreme Court as a hierarchy of constitutional rules that are to be followed in sequence in the drafting of legislative districts. Specifically, rules 3, 5, 6 and 7 are most relevant to this issue, and they are as follows:

. . .

> [3.] In counties having a census population sufficient to support the formation of one non-VRA legislative district falling at or within plus or minus five percent deviation from the ideal population consistent with "one-person, one-vote" requirements, the WCP requires that the physical boundaries of any such non-VRA legislative district not cross or traverse the exterior geographic line of any such county.

. . .

> [5] In counties having a non-VRA population pool which cannot support at least one legislative district at or within plus or minus five percent of the ideal population for a legislative district or, alternatively, counties having a non-VRA population pool which, if divided into districts, would not comply with the at or within plus or minus five percent "one-person, one-vote" standard, *the requirements of the WCP are met by combining or grouping the minimum number*

> *of whole, contiguous counties necessary to comply with the at or within plus or minus five percent "one-person, one-vote" standard.* Within such contiguous multi-county groupings, compact districts shall be formed, consistent with the at or within plus or minus five percent standard, whose boundary lines do not cross or traverse the "exterior" line of the multi-county grouping, provided, however, that the resulting interior county lines created by any such groupings may be crossed or traversed in the creation of districts within said multi-county grouping but only to the extent necessary to comply with the at or within plus or minus five percent "one-person, one-vote" standard.
>
> [6] The intent underlying the WCP must be enforced to the maximum extent possible; thus, *only the smallest number of counties necessary to comply with the at or within plus or minus five percent "one-person, one-vote" standard shall be combined.*
>
> [7.] Communities of interest should be considered in the formation of compact and contiguous electoral districts.

*Stephenson v. Bartlett*, 357 N.C. 301, 305-07 (2003) [hereinafter *Stephenson II*]. *See further, Stephenson I*, at 383-84 (emphasis added).

The crux of the Plaintiffs' argument is whether the WCP and the *Stephenson I* and *II* decisions require the division of the *fewest counties possible* or do they require that *counties be grouped into the smallest groupings possible.* Plaintiffs urge that compliance with the WCP is measured by the former, namely the number of counties kept whole, and not by the

grouping of minimum number of whole, contiguous counties necessary to comply with the one person, one vote standard.

The following table illustrates the county groupings contained within the Enacted Plan compared with all other alternative plans suggested by the Plaintiffs:[26]

**Table 3:** ***Number of Counties in Groupings – Comparison of Enacted Plan with Alternatives***

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| [redacted] | | | | | | | | | | | | | |
| | 11 | 15 | 4 | 2 | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 36 |
| | 11 | 9 | 6 | 4 | 3 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 36 |
| | 10 | 8 | 4 | 5 | 6 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 35 |
| | 8 | 8 | 3 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 25 |
| | 1 | 11 | 4 | 3 | 1 | 1 | 1 | 2 | 1 | 1 | 0 | 0 | 0 | 26 |
| | 1 | 11 | 3 | 7 | 1 | 2 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 28 |
| | 1 | 5 | 4 | 5 | 4 | 1 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 24 |
| | 1 | 4 | 7 | 2 | 3 | 2 | 1 | 1 | 1 | 0 | 1 | 0 | 0 | 23 |

In examining the data in Table 3, comparison of the Enacted House Plan and the House Fair & Legal Plan rows illustrates the difference between the approaches advocated by the Plaintiffs and General Assembly in the Enacted Plans. Both the House Fair & Legal Plan and the Enacted House Plan contain 11 one-county groupings – namely counties where the population is sufficient within one county to permit one or more districts to be drawn wholly within the county lines.

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[26] Direct comparison between the Enacted Plans and each of the alternative plans proposed or endorsed by the Plaintiffs cannot be made because the alternative plans diverge from the Enacted Plans in not creating as many VRA districts as were created by the General Assembly in the Enacted House and Senate Plans. See *supra* at § IV(C)(2)(a). The trial court has concluded that the creation of these VRA districts by the General Assembly is consistent with narrow tailoring requirements. The Plaintiffs have proffered no alternative plan that adopts the General Assembly's VRA districts yet shows that greater compliance with the WCP could have been achieved.

The Enacted House Plan contains 15 two-county groupings, while the House Fair and Legal plan contains only 9 two-county groupings.

At issue is the mandate of the N.C. Supreme Court in *Stephenson I*, as set out above in rule 5: ". . . the requirements of the WCP are met by combining or grouping the minimum number of whole, contiguous counties necessary to comply with the at or within plus or minus five percent 'one-person, one-vote' standard." *Stephenson II*, 357 N.C. at 306. The undisputed evidences establishes that in seeking to comply with this mandate, the drafters of the Enacted House and Senate plans did the following, in sequence: (1) drew the VRA districts; (2) from the remaining counties after the first step, identified all counties whose population would support one or more districts wholly within the county lines; (3) from the remaining counties after the second step, identified *all possible* contiguous two-county combinations whose combined populations would support one or more districts wholly within the borders of the two-county groups; (4) from the remaining counties after the third step, identified *all possible* contiguous three-county combinations whose combined populations would support one or more districts wholly within the borders of the three-county groups; (5) and so on until all counties were included. By combining counties into groups by starting first with two-county groups, and combining *all possible* two-county groups, and then next considering three-county groups, and so on, the Enacted Plan drafters met the requirements of the WCP, as articulated in *Stephenson I* and *II*, "by combining or grouping the minimum number of whole, contiguous counties necessary to comply with the plus or minus five percent 'one-person, one-vote' standard." 355 N.C. at 383-84; 357 N.C. at 306.

The drafters of the House Fair & Legal Plan, rather than creating as many two-county groupings as possible, made only 9 two-county groupings (compared to 15 two county groupings in the Enacted House Plan), which resulted in more three-county groupings than the Enacted House Plan (6 compared to 4). Likewise, in the Senate Fair & Legal Plan, the drafters created an equal number of two-county groups as the Enacted Senate Plan, but failed to create as many three-county groups as possible (3 compared to 4 in the Enacted Senate Plan) which resulted in a greater number of four-county groups in the Senate Fair & Legal Plan (7 compared to 3 in the Enacted Senate Plan). The Plaintiffs, in advocating for the Fair & Legal Plans, and the grouping methodology contained therein, argue that their methodology resulted in fewer divided counties than the Enacted Plans. Under the House Fair & Legal Plan, 44 counties are divided compared to 49 in the Enacted House Plan; under the Senate Fair & Legal Plan, 14 counties are divided compared to 19 under the Enacted Senate Plan. Plaintiffs urge that the intent of the WCP is best met by comparing the number of counties kept whole in competing plans.

The intent and interpretation of Rule 5 of *Stephenson I* was addressed in *Stephenson II*, where the defendants in that case, in connection with the 2002 revised redistricting plans, urged, like the Plaintiffs in this case, that compliance with the WCP is measured by the number of counties kept whole. The N.C. Supreme Court rejected this argument in the 2003 opinion in *Stephenson II* and, after reiterating the *Stephenson* methodology, affirmed the trial court's findings that, among other things:

8. The General Assembly's May 2002 Fewer Divided Counties Senate and Sutton 5 House Plans fail to comply with the requirement that in forming districts, only the smallest number of counties necessary to comply with the one-person, one-vote requirement should be combined in forming multi-county groupings.

9. The General Assembly's failure to create the maximum number of two-county groupings in the May 2002 House Plan violates *Stephenson I.*

*Stephenson II*, 357 N.C. at 308. In affirming the trial court, the N.C. Supreme Court, in *Stephenson II*, repeated the directive it gave in *Stephenson I* that "we direct that any new redistricting plans . . . shall depart from strict compliance with the legal requirements set forth herein only to the extent necessary to comply with federal law." *Stephenson II*, 357 N.C. at 309 (citing *Stephenson I*, 355 N.C. at 384).

As seen in Table 3 above, each of the alternative House plans proposed or endorsed by the Plaintiffs, like the House Fair & Legal Plan discussed above, suffers from the same defect described in *Stephenson II*, namely each alternative plan fails to create the maximum number of two-county groupings. Indeed, the LBC and SCSJ House alternative plans have fewer one-county groupings than the Enacted House Plan, which departs from strict compliance with another *Stephenson I* requirement that districts not traverse county boundaries of a county that has sufficient population to support one or more House districts solely within the county boundaries *(Stephenson II*, Rule 3, above), Likewise, as seen in Table 3 above, each of the alternative Senate plans proposed or endorsed by the Plaintiffs does not comport with the strict requirements of *Stephenson I.* The LBS and SCSJ alternative Senate plans fail to create the

maximum number of two-county groups when compared to the Enacted Senate Plan.

The divergence between the requirements of the *Stephenson I* and II methodology employed by the General Assembly in crafting the Enacted Plans and the approach Plaintiffs urge is further revealed by the affidavit and deposition testimony of Dr. David Peterson, a statistician employed as an expert witness by the Plaintiffs. Notably, Dr. Peterson *did not* opine or suggest that the General Assembly's county groupings in the Enacted Plans did not conform to the methodology set out in the prevailing law of *Stephenson I* and *II*, but rather, he opined that *he disagreed* with the N.C. Supreme Court on what the law ought to be. Dr. Peterson testified, by affidavit, that:

> [T]o make maximum use of county boundaries in constructing voting districts, and thereby minimizing the need to split counties, one should focus on dividing the state into many county groups each having small numbers of representatives rather than each having small numbers of counties. In particular, choosing county groups first by finding all possible single county groups, then all possible two-county groups, and so forth, is unlikely to lead to the most complete use of county boundaries, and the smallest number of divided counties.

Fifth Aff. of Pls.' Statistical Expert, David W. Peterson, PhD, 9[3. Later, in deposition testimony, Dr. Peterson conceded that:

Q. In the third paragraph, the first sentence [of a letter marked Deposition Exhibit 295], it says, "Second, it seems to me that to implement the 'Whole

County Principle' of the North Carolina Constitution, one has to proceed in a manner different from that attributed to *Stephenson II.*" What did you mean by that?

A. I don't know how I could express it more clearly.

Q. All right. That's what I assumed. I assume that it is your belief that the court's process in *Stephenson II* does not implement the Whole County Principle as well as you believe your process does?

A. I think there's a better way of doing it, yes.

Q. So to the extent that this court in *Stephenson II* was implementing the Whole County Principle, you disagree with the way they chose to go about doing it?

A. I think they start off correctly. I think there's a better way of following on to step 2.

Q. Which is where they go into maximizing twos and threes, et cetera?

A. Yes.

*Id.*

Based upon the foregoing, and all matters of record, this trial court, being bound by the precedent established by the N.C. Supreme Court in *Stephenson I* and *Stephenson II*, concludes that as a matter of law the Enacted House Plan and the Enacted Senate Plan conform to the WCP set out in Article II, § 3 and §5, of the North Carolina Constitution, and that the Defendants are entitled to summary judgment in their favor on these claims. For the same reasons, the trial court further finds that the alternative plans proposed or endorsed by the Plaintiffs, namely the House and Senate Fair & Legal Plans, the House and Senate LBC Plans, and the SCSJ House and Senate Plans, each fail to comport with the WCP of the North Carolina

Constitution as those provisions have been interpreted and applied by the N.C. Supreme Court. The Plaintiffs have not met their burden of persuasion that the General Assembly could have achieved greater compliance with the requirements of the WCP than it did in the Enacted Plans.

## VI. DO THE ENACTED PLANS VIOLATE THE EQUAL PROTECTION GUARANTEES OF THE UNITED STATES OR NORTH CAROLINA CONSTITUTIONS BY DISREGARDING TRADITIONAL REDISTRICTING PRINCIPLES BY FAILING TO BE SUFFICIENTLY COMPACT OR BY EXCESSIVELY SPLITTING PRECINCTS?

*(Dickson amended complaint, Claims 9-10; NAACP amended complaint Claims 9-11)*

### *A. Lack of Compactness and Irregular Shapes*

The adherence to "traditional redistricting principles," such as compactness, regularity of shape, continuity, protecting communities of interest and political subdivisions, geographic barriers and protection of incumbents, is relevant in judicial scrutiny of redistricting plans on several levels. First, as noted above, the lack of adherence to traditional redistricting principles and a high degree of irregularity may provide circumstantial evidence that racial considerations have predominated in the redistricting process. Second, "compactness," a traditional redistricting principle, takes on special significance when considering whether a compelling governmental interest exists because, under the *Gingles* factors discussed above, if an enacted VRA district is not significantly compact, one might conclude the absence of the first *Gingles* requirement that a "minority group exists within the area affected by the Enacted Plans, and that this group is sufficiently large and geographically compact to

constitute a majority in a single-member district." *Id.* 478 U.S. at 50-51. Third, traditional redistricting principles may be relevant when comparing alternative plans under a narrow tailoring analysis to determine whether an enacted plan is the least restrictive alternative to accomplish legitimate governmental objectives. Fourth, the *Stephenson I* and *II* Courts each held in Rule 7 of their WCP hierarchy that "communities of interest should be considered in the formation of compact and contiguous electoral districts." 355 N.C. at 383-84; 357 N.C. at 306. Fifth, lack of adherence to traditional redistricting principles, if applied disproportionately, could be viewed as a violation of Equal Protection requirements of the state and federal constitutions.

In the trial court's consideration above of the level of scrutiny,[27] the compelling governmental interests,[28] and narrow tailoring,[29] some discussion can be found regarding the analysis of traditional redistricting principles relevant to each of those topics. In this section, the trial court considers in greater detail the overall concepts of "compactness," "irregularity" and splitting of precincts and then considers the Plaintiffs' contentions that the Enacted Plans, by not adhering to traditional redistricting principles, fail to conform with the *Stephenson I* and *II* mandates or violate equal protection requirements.

With respect to traditional redistricting principles, the Supreme Court has said that:

> [w]e believe that reapportionment is one area in which appearances do matter. A

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[27] See. *supra* at § IV(B).

[28] See, *supra* at § IV(C)(1)(a).

[29] See, *supra* at § IV(C)(2)(d).

> reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group – regardless of their age, education, economic status, or the community in which they live – think alike, share the same political interests, and will prefer the same candidates at the polls. We have rejected such perceptions elsewhere as impermissible racial stereotypes.'

*Shaw I*, 509 U.S. at 647. But, the *Shaw I* Court hastened to explain, that although "appearances do matter":

> [w]e emphasize that these criteria are important not because they are constitutionally required – they are not – but because they are objective factors that may serve to defeat a claim that a district has been gerrymandered on racial lines.

*Id.* (citations omitted.). Indeed, the Supreme Court has said that "districts not drawn for impermissible reasons or according to impermissible criteria may take any shape, even a bizarre one." *Vera*, *517* U.S. at 999 (Kennedy, J., concurring). In other words, lack of adherence to traditional redistricting principles is relevant because (1) it is circumstantial evidence of an improper racial motive and (2) if a district is drawn for impermissible reasons, the disregard for traditional redistricting principles is part of the harm suffered by the citizens within an improper district. *See, Johnson*

*v. Miller*, 864 F. Supp. at 1370. However, the failure to adhere to traditional redistricting principles, standing alone, is not a sufficient basis for a federal constitutional challenge to legislative redistricting.

The N.C. Supreme Court, in its hierarchy of rules harmonizing the WCP with federal law, directs that "communities of interest should be considered in the formation of compact and contiguous electoral districts." *Stephenson I*, 355 N.C. at 384. But, read in context, this rule does not elevate compactness and contiguity to an independent constitutional requirement under the North Carolina Constitution. Rather, the Court explains:

> We observe that the State Constitution's limitations upon redistricting and apportionment uphold what the United States Supreme Court has termed "traditional districting principles." These principles include such factors as compactness, contiguity, and respect for political subdivisions. The United States Supreme Court has "emphasized that these criteria are important not because they are constitutionally required – they are not but because they are objective factors that may serve to defeat a claim that a district has been gerrymandered on racial lines."

*Id.* at 371 (emphasis omitted).

The *Stephenson II* decision of the N.C. Supreme Court is also instructive on this issue. In that case, the Court found the 2002 legislative redistricting plans to be in violation of the WCP. Among the other findings of the trial court that were adopted by the N.C. Supreme Court was a finding that:

> The 2002 House and Senate plans enacted by the General Assembly contain districts that are not sufficiently compact to meet the requirements of the equal protection clause in that the requirements of keeping local governmental subdivisions or geographica11y based communities of interest were not consistently applied throughout the General Assembly's plan producing districts which were a crazy quilt of districts unrelated to a legitimate governmental purpose.

357 N.C. at 308. Reading this in accord with the *Stephenson I* Court's instruction that traditional redistricting principles are "not constitutionally required," this trial court concludes that under North Carolina law, legislative districts that comply with the WCP, and are not otherwise based upon impermissible criteria, cannot fail constitutional scrutiny merely because they are bizarrely shaped or not sufficiently compact. However, when the WCP is violated, because one of its purposes is to embody traditional redistricting principles, the harm suffered by the citizens of affected counties and districts include those ills associated with bizarre shapes and divided communities of interest. Because, in *Stephenson II*, the requirements of the WCP were not complied with *and* districts were not compact, some citizens of North Carolina were disproportionately burdened by a "crazy quilt of noncompact districts." 357 N.C. at 308. However, nothing in *Stephenson II* suggests that, standing alone, without a WCP violation, the failure to achieve compliance with traditional redistricting criteria would be sufficient to defeat a legislatively enacted redistricting plan. As succinctly stated in Justice Parker's dissent in *Stephenson II:*

> [D]ecisions as to communities of interest and compactness are best left to the collective wisdom of the General Assembly as the voice of the people and should not be overturned unless the decisions are "clearly erroneous, arbitrary, or wholly unwarranted."

*Stephenson II*, 357 N.C. at 315 (Parker, J., dissenting) (citations omitted) (Justice Parker urged, in her dissent, that the challenged legislative plans complied with the WCP and were therefore lawful).

B. *Absence of a Judicially Manageable Standard for Measuring Compliance, or Lack Thereof, with Traditional Redistricting Principles*

To the extent that lack of adherence to traditional redistricting principles could be viewed as an independent basis for a constitutional challenge to legislatively enacted redistricting plans, the trial court finds no uniformly adopted judicial standard by which to measure compliance. The absence of such standards invites arbitrary and inconsistent outcomes of the court that must be avoided, particularly when examining challenges to legislatively enacted redistricting plans where the trial court is instructed to respect the inherently political nature of the redistricting process.

The absence of judicially manageable standards is the result of the amorphous and subjective nature of traditional redistricting principles. For example, the notion of "compactness," which generally refers to the shape of a district, both in terms of the breadth of a district's geographic "dispersion" and the irregularity of its "perimeter," *see*, Fairfax Dep. 23, has been described as "such a hazy and ill-defined concept that it seems impossible to apply it in any rigorous sense in matters of law." *Johnson v. Miller*, 864 F. Supp. at

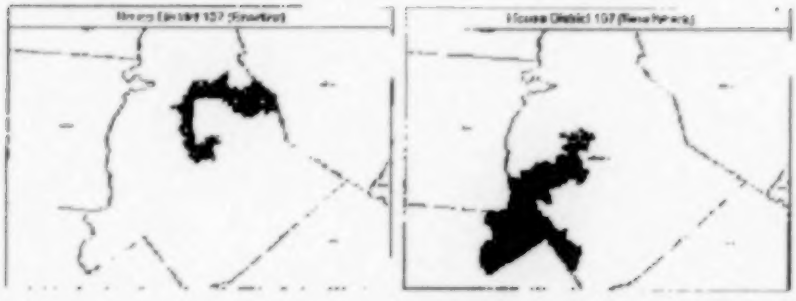
1388. *See also Karcher v. Daggett*, 462 U.S. 725, 756 (1983) (stating that compactness requirements have been of limited use because of vague definitions and imprecise application). The trial court is unaware of any North Carolina or United States Supreme Court opinion that has defined these terms and established a standard by which a legislature could determine whether a district comports thereto.

Plaintiffs' expert, Dr. Arrington, testified that when he consults with the United States Department of Justice on redistricting matters, he uses what he calls an "inter-ocular test" to determine if a district is compact, presumably meaning that if the district is so irregular that it "hits him between the eyes" it must not survive strict scrutiny. Arrington Dep. 202. Such a subjective test of compactness or irregularity is particularly unsuitable for judicial review of redistricting plans in North Carolina because, among other reasons, were this trial court to declare that a certain district was unlawful for lack of compactness or regularity, the law obligates the trial court to further "find with specificity all facts supporitng that declaration, [ ] state separately and with specificity the court's conclusions of law on that declaration, and [the trial court] shall, with specific reference to those findings of fact and conclusions of law, identify every defect found by the court." N.C. Gen. Stat. § 120-2.3. A trial court's finding of fact or conclusion of law that a district "appears to be excessively irregular" would, in this court's view, be insufficient to comply with the requirement of N.C. Gen. Stat. § 120-2.3.

Still, Plaintiffs argue that the N.C. Supreme Court's holding in *Stephenson II* requires this trial court to compare alternative plans to see if more compact alternatives are available. The subjective nature of this task is illustrated by the following examples.

Example 1:

Example 2:



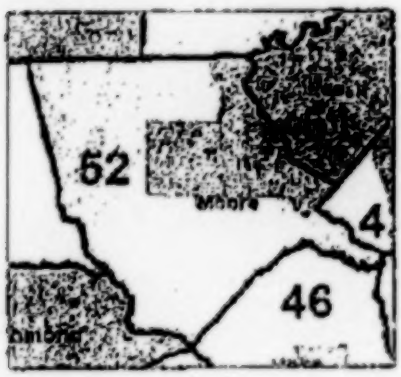
In each of these examples, the district on the left is a House District in the Enacted Plan (Districts 31 (Durham County) and 107 (Mecklenburg County), respectively). The districts on the right are corresponding alternative districts proposed by the Plaintiffs in the House Fair & Legal Plan. The Plaintiffs contend the House Districts 31 and 107 in the Enacted Plan are each "non-compact and irrationally shaped." Conversely, the Plaintiffs suggest that their alternative Districtrs 31 and 107 are sufficiently compact and rationally shaped.

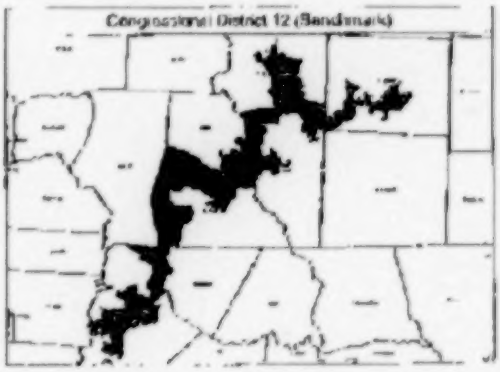
In both of these examples, the trial court is unable to discern any meaningful difference in the compactness and regularity of the Enacted Plan's districts versus the Plaintiffs' proposed alternative districts. Were the trial court inclined to find either of

these eneacted districts invalid on the grounds that they were insufficiently compact or irrationally shaped, the trial court believes it would be unable to articulate any meaningful facts or conclusion of law in support of such a holding other than a subjective perference.

The subjective task of determining whether a district is not compact enough or too irregular is made more complicated by the wide variety of court precedent on this topic. Consider, for example the following two districts:

**Example 3:**




The district on the left is House District 52 as proposed a decade ago. In looking at this district, one might concluded, according to the "inter-ocular" test, that it appears "tidy" and compact. However, this district was rejected by the *Stephenson II* trial court, whose decision was affirmed by the N.C. Supreme Court, as having a "substantial failure in compactness." *See, Stephenson II*, 357 N.C. 301, 309-313 (because it "is shaped like a 'C' rather than being compact, and leaves out the county seat.").

The district on the right is North Carolina's 12th Congressional District, a district perhaps most frequently associated with the lay person's under-

standing of "gerrymandering."[30] However, when the 12th Congressional District faced a legal challenge in the Supreme Court in *Cromartie II*, 532 U.S. 234, even though the Court had previously labeled it as a "bizarre configuration" with a "'snakelike' shape and continues to track Interstate-85," *Cromartie I*, 526 U.S. at 544, n.3, the district's irregular shape and lack of compactness did not, as a matter of law, render the district unconstitutional or unlawful. This same district has persisted as a template for a11 iterations of the 12th Congressional District that have followed in two subsequent decennial redistricting efforts and persists even in the Enacted Congressional Plans under consideration today.

To be sure, there are several districts in the Enacted Plan that are "ugly" and that would appear to most to be bizarrely shaped, irregular and non-compact. For example, House District 7 in the Enacted Plan is one that could be described as such. And, indeed, while the alternative House District 7 proposed in the House Fair & Legal plan is not itself a model of compactness or regularity, it nonetheless could be perhaps described as "prettier."

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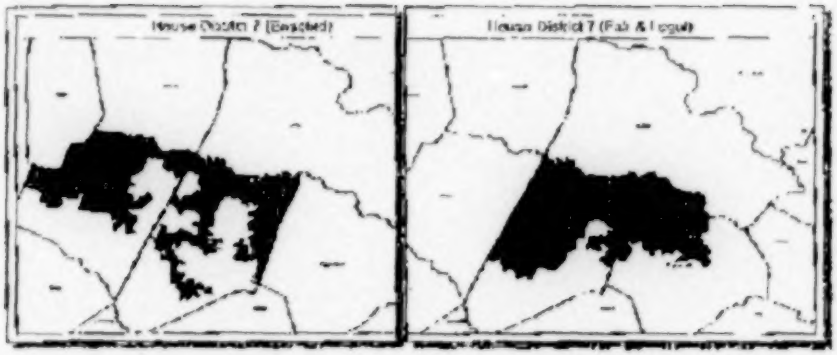
[30]As a rough measure of District 12's universal notoriety as a non-compact district, the Wikipedia article on the term "gerrymandering" has an image of the 2007 version of the 12th Congressional District as its very first image under "examples of gerrymandered districts." *Gerrymandering*, Wikipedia.com, http://en.wikipedia.org/wiki/Gerrymandering (last modified June 30, 2013).

Example 4:



But, in the absence of a judicially consistent, articulable or manageable standard for viewing a district and declaring it sufficiently regular, compact or "pretty," the trial court cannot find that any district, simply on this ground alone, can be declared to be in violation of law or unconstitutional.

The Plaintiffs also urge that mathematical or quantitative measures of compactness or regularity can aid the trial court in determining whether districts in the Enacted Plan should be rejected for lack of adherence to traditional redistricting principles. But these quantitative measures are not, the trial court finds, particularly helpful in this task because even when a numerical value is assigned to "compactness," the trial court is still left with the subjective task of deciding whether, for example, the Roeck Test [31]

[31] The "Roeck Test" is one of several tests employed by experts considering the compactness of voting districts. It measures a district's "dispersion" by circumscribing the district with the smallest circle within which the district will fit, and comparing the area of the circle to the area of the district. A "perfectly compact" district would itself be a circle with a Roeck Score of 1, whereas a completely noncompact district would have a Roeck score of 0. (Fairfax Dep. 24). Whether any given score resulting from the Roeck test, or the other quantitative tests employed, is itself an indication of lack of compactness is "a judgment call." (Fairfax Dep. 76-77).

compactness score of 0.45 for Enacted Plan House District 31 (see above at Example 1) versus a compactness score of 0.46 for the alternative Fair & Legal House District 31 renders the former unconstitutional, and the latter lawful. Or, similarly, whether a non-compactness score of 0.35 renders Enacted Plan District 107 unconstitutional, and the Fair & Legal alternative District 107, with a Roeck score of 0.40, lawful (See above at Example 2). This is in accord with Plaintiffs' own expert, Dr. Arrington, who says:

> Courts and reformers often cite compactness as a valuable technical criterion in redistricting, but scholars do not think it should be a priority. One problem is that there are many different and partially conflicting ways to measure the compactness of a district or a district plan. And there can be no mathematical standard of compactness that can be applied across varying geography in the way that equal population can have a mathematical standard. The most one can say is that with the use of a particular statistic, one redistricting plan for a particular jurisdiction has more or less compact districts than another plan for that same jurisdiction. But there is no standard that can tell us whether the districts in a plan are compact enough.

Arrington Dep. 142-43.

Moreover, even if the trial court could discern between an acceptable score versus a constitutionally defective score, the results of the quantitative tests, when applied to the Enacted Plan and the alternative plans, are decidedly non-conclusive. Consider, for example, a comparison of the Roeck Scores for the

following districts, that are selected for comparison because they all are VRA districts located within a single county:[32]

Table 4: *Roeck Scores for Enacted VRA House Districts within a Single County Compared to Alternatives*

| House District | Enacted Plan (House) | SCSJ | P&L | LBC |
|---|---|---|---|---|
| 29 | 0.47 | 0.38 | | 0.30 |
| 31 | 0.45 | 0.49 | 0.46 | |
| 33 | 0.47 | 0.51 | | 0.32 |
| 38 | 0.31 | 0.45 | | 0.44 |
| 42 | 0.44 | | | 0.48 |
| 43 | | 0.41 | 0.41 | |
| 57 | | 0.52 | 0.51 | 0.51 |
| 58 | | 0.61 | 0.61 | 0.65 |
| 60 | | 0.32 | 0.33 | 0.38 |
| 99 | 0.48 | 0.58 | 0.61 | |
| 101 | 0.47 | 0.40 | | 0.49 |
| 102 | 0.32 | 0.47 | 0.47 | |
| 106 | 0.49 | 0.49 | 0.40 | |
| 107 | 0.35 | | 0.40 | 0.52 |

The shaded blocks in **Table 4** represent the lowest Roeck, or the "least compact" district, among all plans. This comparison illustrates that even with a mathematical analysis of compactness, the results provide a no better judicially manageable standard by which the trial court can measure constitutionally permissible, or constitutionally defective, adherence to traditional redistricting principles. While the above-

[32] Districts contained wholly within a county are selected for this comparison because, as the trial court has concluded above, none of the alternative plans proposed or endorsed by the Plaintiffs complies with the hierarchy of rules established by the *Stephenson I* and *II* courts for compliance with the WCP, and none of the alternative plans are drawn to provide VRA districts in "rough proportionality to the Black population in North Carolina" or populate each VRA district with >50% TB VAP as is done in the Enacted Plans. Because of these differences, each of which could have a dramatic effect on the shape of any given district, comparison among the plans is akin to comparing "apples to oranges." By limiting the comparison to only those districts contained wholly within a county, the comparison becomes, perhaps, more instructive.

tabulated results of 4 of the 14 districts in the Enacted House Plan show the lowest compactness scores for those same districts across all alternative plans, each of the alternative plans, in turn, have their own set of districts that score lower than all others. In sum, in the "beauty contest" between the Enacted Plans and the "rival compact districts designed by plaintiffs' experts," this data suggests, at best, a tie. *Vera*, 517 U.S. at 977.

*C. Excessive Split Precincts*

As a subset of traditional redistricting principles, the trial court considers the claims of the Plaintiffs asserting excessive splitting of precincts.[33] Plaintiffs assert that the excessive splitting of precincts impermissibly infringes on voters' right to vote on equal terms in two ways. First, Plaintiffs contend that the division of an excessive number of precincts deprives North Carolinians of the fundamental right to vote on equal terms by creating two classes of voters: a class that is burdened by the problems of split precincts, and a class that is not. Second, the Plaintiffs contend, the way in which the precincts were divided to achieve a race-based goal disproportionately disenfranchises Black voters because Black voters are more likely to live in precincts split in the Enacted Plan. Split precincts, the Plaintiffs contend, inherently cause voter confusion and a possibility of receiving the wrong ballot at the polls. In both instances, the Plaintiffs contend that the trial court must consider these alleged equal protection violations under a strict scrutiny standard because of the fundamental nature of one's right to

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[33] For the purposes of this discussion, the term "VTD" (Voter Tabulation District), as defined by the U.S. Census Bureau and the term "precinct" are used interchangeably.

vote and the impermissibility of raced-based classifications.

Plaintiffs' claims of equal protection violations must fail as a matter of law for several reasons. First, the trial court is aware of no authority, state or federal, providing constitutional relief on a claim of split precincts. While undoubtedly, the precinct system is of significant value in the administration of elections in North Carolina, *Jarnes v. Bartlett*, 359 N.C. 260, 267 (2005) (enumerating "significant and numerous" advantages of the precinct system), the respect for precincts boundaries is akin to other considerations of traditional redistricting principles that, as discussed above, do not generally provide an independent basis for a constitutional challenge to a redistricting plan that is not otherwise based upon impermissible criteria. Rather, the splitting of excessive precincts may be circumstantial evidence of an impermissible racial motive, or may be the harm resulting from a racial gerrymander, but is not, in and of itself, a constitutional defect. *Shaw I*, 509 U.S. at 647.

Precinct lines are established by each county board of elections. N.C. Gen. Stat. §163-33(4) and -128. There are no uniform, statewide criteria that must be followed by county boards of elections when they create a precinct. Many precinct lines have not been changed for 20 or more years. Bartlett Dep. 21-22; Colicutt Dep. 46-47; Doss Dep. 19-20; Poucher Dep. 39. There is no requirement that precincts be based upon equal population. N.C. Gen. Stat. §163-33(4), 128 and 132.1 *et seq*. There is no requirement that precincts be revised every ten years upon receipt of the Decennial Census like legislative and Congressional districts. N.C. Gen. Stat. § 163-33(4) (providing for revision of precincts as county boards "may deem expedient.") There is no requirement that precincts be drawn

compactly or that they respect communities of interest. N.C. Gen. Stat. §163-33(4), -128 and -132.1 *et seq.* Precinct lines divide neighborhoods. Arrington Dep. 105-106. When towns and municipalities annex property, precincts are split, and some voters then vote in municipal elections, while others in the same precincts vote in county elections. Ultimately, the establishment of precincts by the 100 different county boards of elections is an exercise of their discretion and based upon factors such as the amount of funding made available by their county's board of commissioners and the availability of suitable polling places. N.C. Gen. Stat. § 163-33(4); Poucher Dep. 43. Given the potential for disparate characteristics of precincts throughout the State, it is not surprising that there is no appellate authority affording any special constitutional status to precinct lines that would limit the General Assembly's exercise of its lawful discretion in the redistricting process.

Second, like other instances of traditional redistricting principles, there is no judicially manageable standard for determining when a redistricting plan splits an "excessive" number of precincts. Each alternative plan proposed or endorsed by the Plaintiffs contains split precincts, as did the 2003 Senate Plan and the 2009 House Plan. To be sure, the Enacted Plans split more precincts, and affect more citizens, than the predecessor or alternative plans. But again, the trial court concludes that the subjective nature of what constitutes an "excessive" number of split precincts invites arbitrary and inconsistent outcomes of the trial court that must be avoided, particularly when examining challenges to legislatively enacted redistricting plans, where the trial court is instructed to respect the inherently political nature of the redistricting process.

Third, accepting the Plaintiffs' contention that the splitting of precincts impairs the fundamental right of a split precinct's voters disproportionately to other voters, and that the splitting of precincts was done for a predominantly racial motive, the equal protection analysis that would then follow is identical to that set out above with respect to racial gerrymandering. *(See, supra*, § IV.) As the trial court concluded above, the Enacted Plans were drafted to achieve compelling governmental interests of avoiding § 2 liability and to ensure preclearance under § 5 of the VRA, and the plans were narrowly tailored to accomplish those goals. Where precincts must to be divided to achieve those goals, the General Assembly must be given the leeway to do so.

Of historic significance to the interplay between precinct lines and compliance with § 2 and § 5 of the VRA was the attempt, in 1995, of the General Assembly to enact legislation that would prohibit legislative and congressional districts from crossing precinct lines. N.C. Gen. Stat. §§ 120-2.2 and § 163-261.22 ("whole precinct statute"). When submitted for pre-clearance, the *U.S.* Department of Justice ("USDOJ") objected to preclearance of the whole precinct statute because it concluded the State had failed to prove the statute was free from discriminatory purpose and that the State had failed to prove that the statute would not have a discriminatory "effect" or "lead to a retrogression in the position of . . minorities with respect to their effective exercise of the electoral franchise." Arrington Dep. Ex. 238, at 3 (Letter of USDOJ to Charles M. Hensey, Special Deputy Attorney General (2/13/96)) (quoting *Beer v. United States*, 425 U.S. 130, 131 (1976)). The State's responsibility to create "majority-black districts" formed the basis of the USDOJ's

objection to the whole precinct statute. The USDOJ noted that "under existing law, county election officials may use their discretion with regard to the population size and racial composition of precincts," and noted that prior to the whole precinct requirement, "the size and composition of the precincts were of little relevance because the legislature could draw district lines through precinct lines for any number of reasons (e.g. to protect interests, to voluntarily satisfy the VRA, etc.)." *Id.* at 2. The USDOJ was concerned that, under the whole precinct statute, precincts would take on "new importance" because they would then "be used as the building blocks for each district." *Id.* The USDOJ observed that "if precincts do not fairly reflect minority voting strength, it is virtually impossible for districts to do so." *Id.* Based upon this analysis, the USDOJ blocked the enforcement of the whole precinct statute because it "unnecessarily restrict[ed]" the redistricting process and made "it more difficult to maintain existing majority-black districts and to create new ones." *Id.* at 3. Just as the USDOJ did, the trial court concludes the tool of splitting of precincts to achieve a narrowly tailored redistricting plan designed to avoid § 2 liability and ensure § 5 preclearance must be left available to the General Assembly, and an arbitrary constraint would be ill-advised.

Finally, in connection with the equal protection analysis of the claims challenging excessive split precincts, because the Plaintiffs have not proffered any alternative plans that show that the General Assembly could have achieved its legitimate political and policy objectives in alternate ways with fewer split precincts, the Plaintiffs have failed to persuade the

trial court that the Enacted Plans are not narrowly tailored.[34]

Thus, in considering all of the factors regarding traditional redistricting principles, including the claim of excessive split precincts, the trial court cannot conclude, as a matter of law, that (1) the failure to comport with "traditional redistricting principles," standing alone, renders the Enacted Plans unlawful under the North Carolina or United States constitutions, (2) that, even if such a cause of action exists, that the Enacted Plans deviate from traditional redistricting principles by any meaningful justiciable measure or (3) that a violation of any cognizable equal protection rights of any North Carolina citizens, or groups thereof, will result.

## CONCLUSIONS

Upon review of the entire record, consideration of all arguments of counsel, and being bound by the prevailing authority of the North Carolina Supreme Court and the United States Supreme Court, the trial court finds that the Plaintiffs' Motion for Partial Summary Judgment must be DENIED and, with respect to the claims asserted by the Plaintiffs challenging the 2011 Enacted Plans, the Defendants are entitled to JUDGMENT IN THEIR FAVOR on each claim.

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[34] See *supra* IV(C)(2)(d) and cases cited therein regarding the Plaintiffs' burden when asserting a lack of narrow tailoring under an Equal Protection analysis

So ordered, this the 8th day of July, 2013.

/s/ Paul C. Ridgeway
Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite
Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton
Alma L. Hinton, Superior Court Judge

*Certificate of Service*

The undersigned certifies that the foregoing Judgment and Memorandum of Decision, as well as Appendices A and B, were served upon a11 parties by e-mail and first class mail addressed to the following:

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This the 8 day of July, 2013.

/s/ Carol McLeod

EXHIBIT A

*Dickson v. Rucho*, 11CVS 16896 and 11 CVS 16940 9consolidated) (July 8, 2013) with Appendix A & B

PART 2 of 2

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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
STATE OF NORTH CAROLINA
COUNTY OF WAKE

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11 CVS 16896

11 CVS 16940
*(Consolidated)*

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MARGARET DICKSON, *et al.*,

*Plaintiffs,*

v.

ROBERT RUCHO, *et al.*,

*Defendants.*

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NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, *et al.*,

*Plaintiffs,*

v.

THE STATE OF NORTH CAROLINA, *et al.*,

*Defendants.*

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# APPENDIX A TO THE JUDGMENT AND MEMORANDUM OF DECISION

## FINDINGS OF FACT RELEVANT TO THE ISSUE OF RACIAL POLARIZATION IN SPECIFIC LOCATIONS WHERE VOTING RIGHTS ACT DISTRICTS WERE PLACED IN THE ENACTED PLANS

*See § IV(C)(2)(c) of Judgment and Memorandum of Decision*

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## I. General Findings of Fact

1. In *Thornburg,* North Carolina was ordered to create majority-black districts as a remedy to § 2 violations in the following counties: Bertie, Chowan, Edgecombe, Forsyth, Gates, Halifax, Martin, Mecklenburg, Nash, Northampton, Wake, Washington, and Wilson. *Gingles,* 590 F. Supp. at 365-66, *aff'd, Thornburg,* 478 U.S. at 80; Churchill Dep. Ex. 57, pp. 1, 2 (6/3/11 Memorandum from Michael Crowell and Bob Joyce, UNC School of Government); Churchill Dep, Ex. 60, p. 1 (6/14/11 Memorandum to Senator Bob Rucho from O. Walker Regan, Attorney, Research Division Director)

2. During the legislative process, the two redistricting chairs, Senator Robert Rucho and Representative David Lewis, sought advice from many parties on a variety of issues, including whether North Carolina remained bound by *Gingles*. On May 27, 2011, faculty of North Carolina's School of Government advised the redistricting chairs that North Carolina remained "obligated" to comply with *Gingles*. (Churchill Dep. Ex. 57, pp. 1, 2) ("[I]t appears to be commonly accepted that the legislature remains obligated to maintain districts with effective African American voting majorities in the same areas decided in *Gingles*, if possible.")

3. In 2010, eighteen African American candidates were elected to the State House and seven African American candidates were elected to the State Senate. (First Frey Aff. Exs. 10, 11; Churchill Aff. Ex. 6, 7) Two African American candidates were elected to Congress in 2010. (Churchill Dep. Ex. 81; Churchill Aff. Ex. 1; Second Frey Aff. Ex. 62) All African American incumbents elected to the General Assembly in 2010 or the Congress in 2010 were elected in districts that were either majority-African American or majority-minority coalition districts. (minority-white districts including Hispanics in the category of "white" and one minority non-Hispanic white district) (Second Frey Aff. Exs. 34, 39, 60)[35]

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[35] The census categories of "white," "black," "Hispanic," "total black," and "non-Hispanic white" are included for each district with the "stat packs" attached to all of the various plans in the Map Notebook, The "white" category is without regard to ethnicity and includes people who are Hispanic or Latino. The category "Non-Hispanic white" excludes that portion of the population. (Second Frey Aff. Ex. 34, Notes)

4. No African American candidate elected in 2010 was elected from a majority-white crossover district. (Churchill Dep. Ex. 81, 82, 83 [2010 elections]; Churchill Aff. Exs. 1-3, 6, 7; Map Notebook Stat Pack 2003 Senate Plan, 2009 House Plan, 2001 Congressional Plan) In fact, two African American incumbent senators were defeated in the 2010 General Election, running in majority-white districts. (Churchill Dep. Ex. 82 [2010 Election for SD 5, 2010 Election in Districts with less than 30% Minority Population, SD 24]; Churchill Aff. Ex. 7; Map Notebook, 2003 Senate Plan, Districts 5 and 24 statistics) from 2006 through 2010, no African American candidate was elected to more than two consecutive terms to the legislature in a majority-white district. (Churchill Dep. Ex. 81 [Congressional Races with Minority Candidates, 19922010]; Ex. 82 [Senate Races with Minority Candidates 2006-2010]; Ex. 83 [House Legislative Races with Minority Candidates 2006-2010]; Churchill Aff, Exs 6, 7) From 1992 through 2010, no black candidate for Congress was elected in a majority-white district. (Churchill Dep. Ex. 81)

5. From 2004 through 2010, no African American candidate was elected to state office in North Carolina in a statewide partisan election. In 2000, an African American candidate, Ralph Campbell, was elected State Auditor in a partisan election. In 2004, Campbell was defeated by a white Republican, Les Merritt, in a partisan election for state auditor. Churchill Dep. Ex. 94, 2004 Partisan Elections; *see also Gingles,* 590 F. Supp. at 364-65 (lack of success by black candidates in statewide elections is relevant evidence of legally significant racially polarized voting).

6. In *Cromartie,* the 1997 version of the First Congressional District was challenged as a racial gerrymander. *Cromartie v. Hunt,* 133 F. Supp. 2d 407, 408 (E.D.N.C. 2000) *rev'd on other grounds, Easley v. Cromartie,* 532 U.S. 234 (2001) *("Cromartie II").* The First Congressional District encompassed the following counties: Beaufort, Bertie, Craven, Edgecombe, Gates, Granville, Greene, Halifax, Hertford, Jones, Lenoir, Martin, Northampton, Person, Pitt, Vance, Warren, Washington, Wayne, Wilson. (*See* http://www.ncga.state.nc,us/GIS/Download/District_Plans/DB_1991/Congress/97_,House-Senate_Plan_A/Maps/DistSimple/distsimplel.pdf )

7. The First Congressional District had a total black population of 50.27% and a black voting age population of 46.54%. *Cromartie,* 133 F. Supp. 2d at 415 n.6. Thus, the 1997 First District was not a majority-TBVAP district. Nevertheless, the parties in *Cromartie* stipulated that legally significant racially polarized voting was present in the First District. *Cromartie,* 133 F. Supp. 2d at 422. The district court in *Cromartie* ruled that the First District was reasonably necessary to protect the State from liability under the VRA. *Cromartie,* 133 F. Supp. 2d at 423. That part of the district court's opinion in *Cromartie* was not appealed and remains binding on the State of North Carolina. (Churchill Dep. Ex. 57; *see also* Opinion Letter from UNC School of Government Faculty stating that findings in *Gingles* remain binding on North Carolina)

8. The General Assembly conducted a number of public hearings prior to the legislative session at which redistricting plans were enacted, which provided additional evidence in the record supporting enactment of the VRA districts. There were 13

different public hearing dates running from 13 April 2011, through 18 July 2011. Hearings were often conducted simultaneously in multiple counties and included 24 of the 40 counties covered by § 5. Proposed legislative VRA districts were created before non-VRA districts and the General Assembly conducted a hearing on VRA districts on 23 June 2011. A public hearing on a proposed congressional plan was held on 7 July 2011, and a hearing on proposed legislative plans (including both VRA and non-VRA districts) was held on 18 July 2011. (Affidavit of Robert Rucho [January 19, 2012] ("First Rucho Aff.") Exs. 1 and 2)) Ample testimony was given during these hearings to provide a strong basis in evidence to support the enacted VRA districts.

9. Evidence was presented by counsel for the *NC NAACP* plaintiffs, Anita Earls, and her colleague, Jessica Holmes, on 9 May 2011, and 23 June 2011. On 9 May 2011, both Ms. Earls and Ms. Holmes stated that they were appearing on behalf of the Alliance for Fair Redistricting and Minority Voting Rights ("AFRAM"). (First Rucho Aff. Ex. 6, pp. 7, 8) Ms. Holmes explained that AFRAM was a "network of organizations" that included the Southern Coalition of Social Justice ("SCSJ"), and at least three of the organizational plaintiffs: Democracy NC, the NC NAACP, and the League of Women Voters. (First Rucho Aff. Ex. 6, p. 6) Ms. Holmes stated that a proposed congressional map would be presented by the SCSJ following her statement. (First Rucho Aff. Ex. 6, p. 8) During her presentation on May 9, 2011, Ms. Earls stated that she was speaking on behalf of the SCSI. (First Rucho Aff. Ex. 6, p. 9)

10. In addition to her testimony, on May 9, 2011, Ms. Earls provided the joint committee with other

documents. One of these was her written statement. (Rucho Aff. Ex. 7) Another was a racial polarization study by AFRAM's expert, Dr. Ray Block. (Rucho Aff. Ex. 8) In his study, Dr. Block analyzed the presence of racial polarization in all of the black candidate versus white candidate elections for the General Assembly and Congress (a total of 54 elections) for the 2006, 2008, and 2010 general elections. (Rucho Aff. Ex. 6, p. 12; Rucho Aff. Ex. 7, p. 2; Rucho Aff. Ex. 8, p. 1)[36] Ms. Earls also submitted a law review article prepared by her. *See* Earls *et al., Voting Rights in North Carolina 1982-2006,* 17 S. CAL. REV. L. & Soc. JUST. 577 (2008) (attached to Rucho Aff. as Ex. 9) Filially, Ms. Earls presented a proposed congressional map that is

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[36] The following relevant counties were included in the districts studied by Dr. Block: (a) First Congressional District: Beaufort, Bertie, Chowan, Craven, Edgecombe, Gates, Granville, Greene, Halifax, Hertford, Jones, Lenoir, Martin, Northampton, Pasquatank, Perquimins, Pitt, Vance, Warren, Washington, Wayne, Wilson; (b) Twelfth Congressional District: Guilford and Mecklenburg; (c) 2003 SD 4: Bertie, Chowan, Gates, Halifax, Hertford, Northampton, Perquimins; 2003 SD5: Greene, Lenoir, Pitt; 2003 SD 14: Wake; 2003 SD 20: Durham; 2003 SD 21: Cumberland; 2003 SD 28: Guilford; 2003 SD 38 and 40: Mecklenburg, (d) 2009 HD 5: Bertie, Gates, Hertford, Perquimins; 2009 HD 12: Craven, Lenoir; 2009 HD 21: Sampson, Wayne; 2009 HD 24: Edgecombe, Wilson; 2009 HD 25: Nash; 2009 HD 29 and 31: Durham; 2009 HD 33: Wake; 2009 HD 48: Hoke, Robeson, Scotland; 2009 HD 58 and 60: Guilford; and 2009 HD 101 and 107: Mecklenburg. (*See* First Rucho Aff. Ex. 8, pp. 5-7; Map Notebook provided to the Court ["Map Notebook"), Congress Zero Deviation, 2003 Senate Plan and 2009 House Plan). According to Dr. Block, from 2006-2010, there were no contested general elections between black and white candidates in SD 3, HD 7, 8, 27, 42, 43, 99 and 102. (First Rucho Aff. Ex. 8, pp. 5-7) However, it appears that a contested election between a black and white candidate occurred in 2010 in HD 99. (Churchill Aff. Ex. 3, p. 1)

listed in the map notebook provided to the Court as "SCSJ Congress Plan."

11. Through her testimony and the documents she submitted, Ms. Earls gave her opinion that "we still have very high levels of racially polarized voting in the State." (Rucho Aff. Ex. 6, pp. 12-13) Referencing Dr. Block's report, Ms. Earls testified that racially polarized voting is present when 88 to 93 percent of black voters vote for "the black candidate" and "less than 50" percent of the white voters vote for the black candidate. *Id.* Ms. Earls confirmed her testimony in her written statement which provides:

> Existence of racially polarized voting in North Carolina elections. We asked a political scientist, Ray Block, Jr., to conduct an analysis of the extent to which voting in North Carolina's legislative and congressional elections continue to be characterized by racially polarized patterns. We asked him to examine every black vs. white contest in 2006, 2008, and 2010 for Congress and the State Legislature . . . The report analyzes 54 elections *and finds significant levels of racially polarized voting. The report also finds that the number of elections won by black candidates in majority minority districts is much higher than in other districts. The data demonstrates the continued need for majority-minority districts.*

(First Rucho Aff. Ex. 7, p. 2) (emphasis added)

12. Dr. Block's report provides substantial evidence regarding the presence of racially polarized voting in almost all of the counties in which the General Assembly enacted the 2011 VRA districts. In

his report, Dr. Block attempted to address the following questions:

1. Is there a relationship between the number of Blacks who vote in a particular district and the amount of votes that an African American candidate receives?

2. Is there evidence of racial polarization in the preferences of voters who participate in electoral contests involving African American candidates running against non-Black candidates?

3. Is the number of elections won by Black candidates higher in majority-minority districts than in other districts?

13. Dr. Block's analysis answers all three of these questions in the affirmative. (Rucho Aff. Ex. 8, pp. 1-3) Dr. Block concluded his report with the following summary:

> I offer several different analytical approaches that each tell a similar story about the degree to which polarized voting exists in 2006, 2008 and 2010 North Carolina congressional district elections.[37] Recall that, paraphrasing Justice Brennan's opinion in *Gingles,* racially polarized voting can be identified as occurring when there is a consistent relationship between the race of the voter and the way in which s/he votes. In *all* elections examined

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[37] Dr. Block's total report strongly indicates that his examination and conclusions apply to all of the districts he analyzed, not just congressional districts as stated in this sentence. Certainly, given her testimony, written statement, and maps proposed by SCSJ, it appears that Ms. Earls understood that Dr. Block's study applied to all the districts he studied.

> here, such a consistent pattern emerges. Furthermore, the evidence in Figure 2 suggests that *majority-minority districts facilitate the election of African American candidates.*

(Rucho Aff. Ex. 8, pp. 3-11) (emphasis added)

14. Dr. Block's report is highly informative in demonstrating racially polarized voting in many areas of the State. To a limited extent, it leaves a few questions in some areas. First, Dr. Block assessed 54 elections in the State of North Carolina in 2006, 2008, and 2010 to determine the degree to which African American candidates for political office failed to win the support of "non-blacks" in the event they were the preferred candidate among black voters. In Dr. Block's analysis, the non-black vote for the black candidate includes whites and minorities other than blacks who voted for the black candidate. Thus, any assessment of the "non-black" vote for the black candidates in an election held in a majority-black or a majority-minority district does not represent the exact percentage of white voters who voted for the candidate of choice of black voters. (Rucho Aff. Ex. 8, p. 1 n. 1; Second Frey Aff. Exs. 34, 39, 60)

15. Second, Dr. Block's report likely overstates the percentage of non-black voters who would vote for a black candidate in an election with genuine opposition. This is because most of the black candidates were incumbents or faced token opposition in the general election. (Churchill Dep. Exs. 81, 82, 83; Churchill Aff. Exs. 1-7; Defendants' Resp. to Pls. "Undisputed Facts" [Jan. 4, 2013], IN 68-82); *see also Thornburg,* 478 U.S. at 57, 60, 61.

16. Third, Dr. Block could only analyze a legislative election where the black candidate had opposition. Many of the legislative elections from 2006-2010 involved races where the black candidate was unopposed. (First Rucho Aff. Ex. 8, pp. 1-7; Churchill Dep. Exs. 81, 82, 83; Churchill Aft Exs. 1-7)

17. Finally, because Dr. Block only looked at contested legislative elections, his report provided no information regarding counties in eastern North Carolina that have never before been included in a majority-black or majority-minority district.

18. Because of these limitations, the General Assembly engaged Dr. Thomas Brunell to prepare a report that would supplement the report provided by Dr. Block. (First Rucho Aff. 9[ 15, Ex. 10)

19. Dr. Brunell was asked to assess the extent to which racially polarized voting was present in recent elections in 51 counties in North Carolina. (First Rucho Aff. Ex. 10, p. 3) These counties included the 40 North Carolina counties covered by Section 5 of the VRA and Columbus, Duplin, Durham, Forsyth, Jones, Mecklenburg, Richmond, Sampson, Tyrell, Wake, and Warren counties. *id.*[38]Elections analyzed by Dr. Brunell included the 2008 Democratic Presidential primary, the 2008 Presidential General Election, the 2004 General Election for State Auditor (the only statewide partisan election for a North Carolina office

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[38] The forty counties covered by Section 5 include: Anson, Beaufort, Bertie, Bladen, Camden, Caswell, Chowan, Cleveland, Craven, Cumberland, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hoke, Jackson, Lee, Lenoir, Martin, Nash, Northampton, Onslow, Pasquotank, Perquimans,Person, Pitt, Robeson, Rockingham, Scotland, Union, Vance, Washington, Wayne, and Wilson. (Churchill Dep. Ex. 46, Legislator's Guide to Redistricting p. 6)

between black and white candidates), local elections in Durham County, local elections in Wake County, the 2010 General Election for Senate District 5, the 2006 General Election for House District 60, local elections in Mecklenburg County, local elections in Robeson County, and the 2010 Democratic primary for Senate District 3. (First Rucho Aff. Ex. 10, pp. 5-25)

20. Based upon his analysis, Dr. Brunell found "statistically significant racially polarized voting in 50 of the 51 counties." (First Rucho Aff. Ex. 10, p. 3) Dr. Brunell could not conclude whether statistically significant racially polarized voting had occurred in Camden County because of the small sample size. *Id.* All of the counties located in the 2011 First Congressional District, VRA districts in the 2011 Senate Plan, and VRA districts in the 2011 House Plan are included in Dr. Brunell's analysis.

21. At no time during the public hearing or legislative process did any legislator, witness, or expert question the findings by Dr. Block or Dr. Brunell. it was reasonable for the General Assembly to rely on these studies.

22. The law review article submitted by Ms. Earls also provided evidence of racially polarized voting as alleged or established in voting rights lawsuits filed in many of the counties in which 2011 VRA districts were enacted. (Rucho Aff Ex. 9, App. B) These cases included: *Ellis v. Vance County, Fayetteville; Cumberland County Black Democratic Caucus v. Cumberland County; Fussell v. Town of Mt. Olive* (Wayne), *Hall v. Kennedy* (Clinton City Council and City Board of Education) (Sampson); *Harry v. Bladen County, Holmes v. Lenoir County; Johnson. v. Halifax County; Lewis v. Wayne County; McClure v. Granville County; Montgomery County Branch of the NAACP v.*

*Montgomery County Board of Election; Moore v. Beaufort County; NAACP v. Duplin County; NAACP v. Elizabeth City* (Pasquatank); *NAACP v. Forsyth County; NAACP v. Richmond County; NAACP v. Roanoke Rapids* (Halifax County); *Pitt County Concerned Citizens for Justice v. Pitt County; Rowson v. Tyrell County; Speller v. Laurinburg* (Scotland County); *United States v. Lenoir County; Webster v. Person County; White v. Franklin County;* and *Wilkers v. Washington County.* (First Rucho Aff Ex. 9, App. B, pp. 4-27)

23. During the public hearing process, many witnesses besides Ms. Earls testified about the continuing presence of racially polarized voting, the continuing need for majority-minority districts, and the continuing existence of the *Gingles* factors used to judge "the totality of the circumstances." Not a single witness testified that racial polarization had vanished either statewide or in areas in which the General Assembly had enacted past VRA districts.

24. On 13 April 2011, Lois Watkins, a member of the Rocky Mount City Council, asked the legislature to draw majority-minority districts and stated that there was a desire in the City of Rocky Mount to elect and keep representatives of choice. (NCII-S-28F-3(a), pp. 13-15)[39] Another member of the Rocky Mount City Council, Reuben Blackwell, testified that there was inequality in housing, elections, transportation, and

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[39] Citations beginning "NCI I-S-28F" refer to a portion of the preclearance submission to USD0.1 of the enacted Senate Plan dealing with public input. Pages cited herein were attached to Defendants' Response to "Plaintiffs' Undisputed Material Facts" as "Attachment B." Moreover, an electronic copy of the State's complete Section 5 submission was provided to the Court with Defendants' Motion for Summary Judgment.

economic development. (NC I I-S-28F-3(a), pp. 20-23) AFRAM representative Jessica Holmes testified that many historical factors, including racial appeals in campaigns, had conspired to exclude African American voters from the political process. (NC11-S-28F-3(a), pp. 24-27) Ms. Holmes further stated that social science would Confirm that racially polarized voting continues to occur in many areas of North Carolina and that any redistricting plan should not have the purpose or effect of making African American voters worse off. (NCI1-S-28F-3(a), p. 26) Finally, Andre Knight, another member of the Rocky Mount City Council and President of the local branch of the NAACP, testified about the historical exclusion of African Americans from the electoral process in Rocky Mount, that race and economic class continued to be divisive issues in regard to school systems, and that racially polarized voting still exists and is demonstrated by the negative attitude toward the African American majority on the Rocky Mount City Council. (NC 11-S-28F-3(a), pp. 28-30)

25. On 20 April 2011, Bob Hall, Executive Director of plaintiff Democracy NC and a proffered expert for plaintiffs, testified that race must be taken into consideration in the redistricting process, that discrimination still exists in North Carolina, and that racially polarized voting continues in some parts of the State. (NC11-S-28F-3(b), pp. 29-31) Toye Shelton, an AFRAM representative, testified that African Americans and other protected groups must be afforded an equal opportunity to participate in the political process. (NC11-S-28F-3(b), pp. 33-37) Terry Garrison, a Vance County Commissioner, urged the legislature to be cognizant of race as they drew districts. (NC11-S-28F-3(b), pp. 41-44) Lavonia Allison, Chair of the Durham Committee on the

Affairs of Black People, testified that racial minorities have faced discrimination in voting, that race must be taken into account when drawing redistricting plans to serve the goal of political participation, and that the VRA requires the General Assembly to draw districts in which minorities are afforded the opportunity to elect a candidate of choice. (NC11-S-28F-3(b), pp. 71-74) Ms. Allison also drew attention to the fact that African Americans represent 22% of the total population of North Carolina and that fair representation would reflect that with proportional numbers of representatives in the General Assembly. *Id.*

26. On 28 April 2011, Bill Davis, Chair of the Guilford County Democratic Party, testified that redistricting plans should not undermine minority voting strength. (NC 11-S-28F-3(d), pp. 17-20) James Burroughs, Executive Director of Democracy at Home, advised that the legislature was "obligated by law" to create districts that provide an opportunity for minorities to elect candidates of choice. He asked that current minority districts be maintained and that other districts be created to fairly reflect minority voting strength. -(NC11-S-28F-3(d), pp. 26-28)

27. On 30 April 2011, June Kimmel, a member of the League of Women Voters, told the committee that race should be considered when drawing districts and that the legislature must not "weaken" the minority vote to avoid a court challenge. (NC 11-S-28F-3(f), pp. 9-12) Mary Degree, the District 2 Director of the NAACP, stated that the legislature was legally obligated to consider race, asked that current majority-minority districts be preserved, and asked that new majority-minority districts be added based upon new census data. (NC 11-S-28F-3(f), pp. 17-19) Maxine Eaves, a member of the League of Women

Voters, urged that any new plan fairly reflect minority voting strength. (NC 1 1-S-28F-3 (f), pp. 28-31)

2. On 7 May 2011, Mary Perkins-Williams, a resident of Pitt County, testified that the VRA was in place to give minorities a chance to participate in the political process. She stated that Pitt County African Americans had faced disenfranchisement and that it remained hard for African Americans to be elected in her county. (NC11-S-28F-3(j), pp. 23-26) Taro Knight, a member of the Tarboro Town Council, expressed his opinion that wards for the Town Council drawn with 55% to 65% African American population properly strengthened the ability of minorities to be elected. (NC11-S-28F-3(j), pp. 40-42)

29. On 7 May 2011, Keith Rivers, President of the Pasquotank County NAACP, stated that race must be considered, that current majority-minority districts should be preserved, and that additional majority-minority districts should be drawn where possible. (NC11-S-28F-3(k), pp. 9-11) Kathy Whitaker Knight, a resident of Halifax County, stated that race must be considered to enfranchise all voters. (NC11-S-28F-3(k), pp. 35-37) Nehemiah Smith, editor of the *Weekly Defender*, a publication in Rocky Mount, North Carolina, testified that minorities have faced many obstacles to being involved in the electoral process throughout history. (NC11-S-28F-3(k), pp. 39-41) David Harvey, President of the Halifax County NAACP, stated that communities in eastern North Carolina are linked by high poverty rates, disparities in employment, education, housing, health care, recreation and youth development, and that these communities have benefitted from majority-minority districts. (NC11-S-28F-3(k), pp. 47-48)

30. On 23 June 2011, Florence Bell, a resident of Halifax County, testified that northeastern North Carolina continued to lag behind in the *"Gingles* factors" including "high poverty rates, health disparities, high unemployment, community exclusion, lack of recreational and youth development and that these are contributing factor to juvenile delinquency, issues of racial injustice, inequality of education and economic development." (NC 11-S-28F-3(m), pp. 97-100)

31. On June 23, 2011, Ms. Earls and AFRAM provided an additional submission to the Joint Redistricting Committee, (First Rucho Aff. 18 Ex. 12) This submission included a written statement by Ms. Earls and proposed North Carolina Senate and North Carolina House maps. *(Id.;* Map Notebook, SCSJ Senate Plan and SCSJ House Plan) In her statement, Ms. Earls stated that the two SCSJ plans should be considered because they "compl[ied] with the Voting Rights Act." (First Rucho Aff. Ex. 12, p. 1) More specifically, Ms. Earls stated that the SCSJ Senate and House Plans complied "with the non-retrogression criteria for districts in counties covered by Section 5 of the Voting Rights Act" and "Section 2 of the Voting Rights Act in Mecklenburg, Forsyth, and Wake Counties." *Id.*

32. On 18 July 2011, Professor Irving Joyner, representing the NAACP, affirmed that racially polarized voting continues to exist in North Carolina. (NC1I-S-28F-3(o), pp. 68-76))

33. In summary, during the public hearing process, many witnesses presented testimony that majority-minority districts are still needed, that racially polarized voting still exists throughout North Carolina and in the areas where the General Assembly created

VRA districts, and that new majority-black districts should be created when possible.

34. The General Assembly convened in legislative session on Monday, 25 July 2011, for purposes of enacting Senate, House, and Congressional redistricting plans. (NC11-S-27H) On that same date, Democratic Leaders published their three redistricting plans: .Congressional Fair and Legal; Senate Fair and Legal; and House Fair and Legal. (http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2011.asp?Plan=Congressional_Fairand_Legal&Body=Congress),(http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2011.asp?Plan=Senate_Fair_and_Legal&Body=Senate), (http://www.ncleg.netirepresentation/Content/Plans/PlanPage_DB_2011.asp?Plan=House_Fair_and_Legal&Body=House) On that same date, the Legislative Black Caucus published, for the first time, their Possible Senate Plan and Possible House Plan. (http://www ncleg .nettrepresentation/Conten.t/Plans/PlanPage_DB_2011.asp?Plan=Possible_Senate_Districts&Body=Senate), (http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2011.asp?Plan=Possible_House_Districts&Body=House)

35. On 27 July 2011, the General Assembly passed the 2011 Senate Redistricting Plan, 2011 S.L. 404 (Rucho Senate 2) and the 2011 Congressional Plan, 2011 S.L. 403 (Rucho-Lewis Congress 3). *(NAACP* Pl. Am Cornpl. 65) On 28 July 2011, the General Assembly enacted the 2011 House Redistricting Plan, 2011 S.L. 402 (Lewis-Dollar-Dockham 4). *Id.* As will be shown below, all of the enacted VRA districts are located in areas of the State where Democratic leaders and the Legislative Black Caucus recommended the

enactment of majority-black districts or majority-minority coalition districts.

II. District-by-District Evidence of Racial Polarization in the Areas Where the General Assembly Created 2011 VRA Districts.

36. 2011 First Congressional District

TBVAP: 52.65 (First Frey Aff. Ex. 12)

Counties: Beaufort, Bertie, Chowan, Craven, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Hertford, Lenoir, Martin, Nash, Northampton, Pasquatank, Perquimins, Pitt, Vance, Warren, Washington, Wayne, Wilson.

(Map Notebook, Rucho-Lewis Congress 3)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that this district is a racial gerrymander. (*Dickson* Pls. Am. Compl. 501-04, 515-19; *NAACP* Pls. Am. Compl. 435-42; 480-86)

b. Counties included in *Gingles* districts:

Bertie, Chowan, Edgecombe, Gates, Halifax, Martin, Nash, Northampton, Washington, Wilson

(*See* General Findings of Fact, No. 1)

c. Counties included in *Cromartie* First Congressional District:

Beaufort, Bertie, Craven, Edgecombe, Gates, Granville, Greene, Halifax, Hertford, Lenoir, Martin, Northampton, Pitt, Vance, Warren, Washington, Wayne, Wilson

(*See* General Findings of Fact, No, 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 First Congressional District: Granville, Vance, Warren, Northampton, Hartford, Gates, Pasquatank, Perquimins, Chowan, Bertie, Halifax, Edgecombe, Martin, Washington, Wilson, Pitt, Beaufort, Wayne, Greene, Lenoir, Craven
2003 SD 3: Edgecombe, Martin, Pitt
2003 SD 4: Bertie, Chowan, Gates, Halifax, Northampton, Hertford, Perquimans
2009 HD 5: Bertie, Gates, Hertford, Perquimons
2009 HD 7: Halifax, Nash
2009 HD 8: Martin, Pitt
2009 HD 12: Craven, Lenoir
2009 HD 24: Edgecornbe, Wilson
2009 HD 27: Northampton, Vance, Warren
2009 HD: 21; Wayne

(Map Notebook, Congress Zero Deviation, 2003 Senate, 2009 House; First Frey Aff, Exs. 10, 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 Counties:

Bertie, Chowan, Craven, Edgecornbe, Franklin, Gates, Granville, Greene, Halifax, Hertford, Lenoir, Martin, Nash, Northampton, Pasquatank, Perquimons, Pitt, Vance, Washington, Wayne, Wilson

(Churchill Dep. Ex. 45, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006- 2010:

2006 HD 5: Bertie, Gates, Hertford, Perquimons
2006 HD 12: Craven, Lenoir
2008 SD 5: Greene, Lenoir, Pitt, Wayne
2008 HD 12: Craven, Lenoir
2010 CD 1: See above Id
2010 SD 4: Bertie, Chowan, Halifax, Hertford, Northampton
2010 SD. 5: Greene, Lenoir, Pitt, Wayne
2010 HD 12: Craven, Lenoir
2010 HD, 21: Wayne
2010 HD 24: Edgecombe, Wilson

(First Rucho Aff. Ex, 8, pp. 5-7; Map Notebook, Congress Zero Deviation, 2003 Senate, 2003 House)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Counties: Beaufort, Bertie, Chowan, Craven, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Hertford, Lenoir, Martin, Nash, Northington, Pasquatank, Perquimins, Pitt, Vance, Warren, Washington, Wayne, Wilson.

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority districts in plans proposed by SCSJ or Democratic Leaders:

SCSJ CD 1: Beaufort, Bertie, Chowan, Craven, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Hertford, Lenoir, Martin, Nash, Northampton, Pasquatank, Perquimons,

Pitt, Vance, Warren, Washington, Wayne, Wilson.

Congressional F&L CD 1: Beaufort, Bertie, Chowan, Craven, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Hertford, Lenoir, Martin, Nash, Northampton, Pasquatank, Perquimons, Pitt, Vance, Warren, Washington, Wayne, Wilson.

SCSJ SD 3: Edgecombe, Martin, Pitt, Wilson, Washington F&L SD 3: Bertie, Edgecornbe, Martin, Wilson PSD SD 3: Edgecombe, Nash, Pitt

SCSJ SD 4: Bertie, Gates, Halifax, Hertford, Northampton, Vance, Warren

F&L SD 4: Chowan, Gates, Halifax, Hertford, Northampton, Vance, Warren

PSD SD 4: Bertie, Chowan, Gates, Halifax, Hertford, Warren, Northampton, Perquimans, Washington

SCSJ HD 5: Bertie, Chowan, Gates, Hertford, Pasquatank, Perquimans, Washington

SCSJ HD 7: Edgecombe, Halifax, Nash

SCSJ HD 8: Bertie, Martin, Pitt

SCSJ HD 24: Edgecombe, Halifax, Wilson

SCSJ HD 27: Gates, Halifax, Hertford, Northampton, Vance, Warren

SCSJ HD 12: Craven, Greene, Lenoir

SCSJ HD 21: Wayne

F&L HD 5: Bertie, Gates, Hertford, Martin

F&L HD 7: Edgecombe, Nash

F&L HD 8: Pitt

F&L HD 24: Edgecombe, Wilson

F&L HD 27: Halifax, Northampton

F&L HD 12: Craven, Greene, Lenoir

F&L HD 21: Wayne

PHD HD 5; Bertie, Gates, Hertford, Martin

PHD HD 7: Halifax, Nash
PHD HD 8: Greene, Pitt
PHD HD 24: Edgecombe, Wilson PHD HD 27: Northampton, Warren
PHD HD 12: Craven, Lenoir PHD HD 21: Wayne

(Map Notebook; SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

37. 2011 Senate District 4

TBVAP 52.75 (First Frey Aff. Ex. 10)

Counties: Halifax, Vance, and Warren, and portions of Nash and Wilson

(Map Notebook, Rucho Senate 2)

a. Which group of plaintiffs have challenged this district?

Only the *Dickson* plaintiffs have alleged that the district is a racial gerrymander. (Dickson Pls. Am, Compl. ¶¶ 497-500, 510-14) The

NAACP plaintiffs did not challenge this district. *(NAACP* Pis. Am. Compl. ¶¶ 422-34, 472-79)

b. Counties included in *Gingles* districts: Halifax, Nash, Wilson *(See* General Findings of Fact, No. 1)

c. Counties included in *Cromartie* First Congressional District:

Halifax, Nash, Vance, Warren

(See General Finding of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 First Congressional District: Halifax, Nash, Vance, Warren, Wilson
2003 Senate District 4: Halifax
2009 House District 7: Halifax, Nash
2009 House District 24: Nash, Wilson

(Map Notebook, Congress Zero Deviation, 2003 Senate, 2009 House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 Counties: Halifax, Nash, Vance, Wilson (Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2001 Congressional District 1: Halifax, Nash, Vance, Warren, Wilson 2003 SD 4: Halifax
2003 HD 24: Wilson, Nash
2009 HD 25: Nash

(First Rucho Aff. Ex. 8, pp. 5-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Halifax, Nash, Vance, Warren, Wilson

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority districts in plans proposed by SCSJ or Democratic Leaders:

SCSJ Congress CD 1: Halifax, Nash, Vance, Warren, Wilson Congressional Fair & Legal 1: Halifax, Nash, Vance, Warren, Wilson
SCSJ SD 3: Wilson

F&L SD 3: Wilson
SCSJ SD 4: Halifax, Vance, Warren
F&L SD 4: Halifax, Vance, Warren
PSD SD4: Halifax, Warren
PSD SD 3: Nash
SCSJ HD 27: Halifax, Vance, Warren
SCSJ HD 7: Halifax, Nash
SCSJ HD 24: Halifax, Wilson
F&L HD 27: Halifax
F&L HD 7: Nash
F&L HD 24: Wilson
PHD HD 27: Nash, Warren
PHD HD 7: Halifax, Nash
PHD HD 24: Wilson

(Map Notebook; SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff Exs. 10-12; Second Frey Aff. Exs. 36-38; 41, 43, 66, 67)

38. 2011 Senate District 5

TB VAP 5L97% (First Frey Aff Ex.10)
Counties: Greene, Lenoir, Pitt, Wayne

(Map Notebook, Rucho Senate 2)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that the district is a racial gerrymander. *Dickson* Pls. Am. Compl. a 497-500, 510-14; *NAACP* Pis. Am_ Compl. ¶¶ 422-34, 472-79.

b. Counties included in *Gingles* districts: None

c. Counties included in *Cromartie* First Congressional District: Greene, Lenoir, Pitt, Wayne *(See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 First Congressional District: Greene, Lenoir, Pitt, Wayne
2003 SD 3: Pitt
2003 HD 8: Pitt
2003 HD 12: Greene, Lenoir
2003 HD 21: Wayne

(Map Notebook, Congress Zero Deviation, 2003 Senate Plan, and 2009 House Plan; First Frey Aff. Exs, 10, 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 Counties: Greene, Lenoir, Pitt, Wayne (Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010

2010 CD 1: Greene, Lenoir, Pitt, Wayne
2008 & 2010 SD 5: Greene, Pitt, Wayne
2008 & 2010 HD 12: Lenoir
2008 & 2010 HD 21: Wayne

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to have statistically significant racially polarized voting:

Greene, Lenoir, Pitt, Wayne

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority districts in plans proposed by SCSI or Democratic leaders:

SCSI CD 1: Greene, Lenoir, Pitt, Wayne
F&L CD 1: Greene, Lenoir, Pitt, Wayne
SCSI SD 3: Pitt

PSD SD 3: Pitt
SCSI HD 12: Greene, Lenoir
SCSI HD 21: Wayne
F&L HD 8: Pitt
F&L HD 12: Greene, Lenoir
F&L HD 21: Wayne
PHD HD 8: Greene, Pitt
PHD HD 12: Lenoir
PHD HD 21: Wayne

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

39. 2011 Senate District 14

TBVAP: 51.28% (First Frey Aff. Ex. 10)
County: Wake (Map Notebook, Rucho Senate 2)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that the district is a racial gerrymander. *(Dickson* Pls. Am. Compl. 9[91 497-500, 510-14; *NAACP* Pls. Am. Compl. Irf 422-34, 472-79)

b. County included in *Gingles* districts: Wake *(See* General Findings of Fact, No. 1)

c. County included in *Cromartie* First CD: None

d. County that was part of 2001/2003/2009 majority-black or majority-minority district

2003 Senate District 14:

Wake 2009 House District 33: Wake

(Map Notebook, 2003 Senate Plan; 2009 House Plan; First Frey Aff. Exs. 10, 11; Second Frey Aff. Exs. 34, 39; First Frey Aft', Exs. 10, 11)

e. Section 5 county: No

f. County included in Dr. Block's analysis of district elections from 2006-2010:

2008-2010 SD 14: Wake 2008 HD 33: Wake

(First Rucho Aff. Ex. 8, pp. 1-7)

g. County analyzed by Dr. Brune11 and confirmed as continuing to experience statistically significant racially polarized voting:

Wake

(First Rucho Aff. Ex. 10, pp. 10-14)

h. Counties included in majority-black or majority-minority districts in plans proposed by SCSJ or Democratic leaders:

SCSJ SD 14: Wake
F&L SD 14: Wake
PSD SD 14: Wake
SCSJ HD 33: Wake
F&L HD 33: Wake
PHD HD 33: Wake

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11; Second Frey Aff. Exs. 36-38; 41-43)

i. County included in majority-black Superior Court district in recently enacted Superior Court Plan: Wake

*(See:* http://www.wakegov.comigis/services/Documents/SuperiorCourt_24x24.pdf; N.C. Gen. Stat. §§ 7A-41(b)(3)-(6b))

40. 2011 Senate District 20

TBVAP: 51.04% (First Frey Aff. Ex. 10)
County: Durham, Granville (Map Notebook, Rucho Senate 2)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that the district is a racial gerrymander. *(Dickson* Pls. Am. Compl. 9[9[ 497-500, 510-14; *NAACP* Pls. Am. Compl. 911422-34, 472-79)

b. Counties included in a *Gingles* District:

In *Thornburg v. Gingles,* 478 U.S. 38, 77 (1986), because of the sustained success of black candidates, the United States Supreme Court reversed the district court's finding that racially polarized voting was present in the

1982 version of District 23 located in Durham County. In *Pender County v. Bartlett,* 361 N.C. 491, 494, 649 S.E.2d 364, 367 (2007), *aff'd sub. nom Bartlett v. Strickland,* 561 U.S. 1 (2009), the North Carolina Supreme Court relied upon an affidavit filed by Representative Martha Alexander to make the statement that "[p]ast elections in North Carolina demonstrate that a legislative voting district with a total African-American population of at least 41.54 percent, or an African-American voting age population of at least 38.37 percent, creates an opportunity to elect African American candidates." What was not mentioned is that

the district cited from Representative Alexander's affidavit was the 1992 version of the same multi-member, Durham County, District 23 that had been reviewed in *Gingles*. (Record on Appeal at 45-63 (Aff. of Martha Alexander, 7, Att. A), *Pender County* (No. 103A06) (available at http://www.ncappellatecourts.org/show-file.php?document_id=65479)

As explained by the Supreme Court in *Thornburg* and the district court's opinion in *Gingles*, the dynamics of racially polarized voting is completely different in a multi-member district as compared to a single-member district. For example, in a multi-member district, a black candidate may be elected when he or she is the last choice of white voters, but where the number of candidates running is identical to the number of positions to be elected. *Gingles*, 590 F. Supp. at 368 n.1, 369. Further, "bullet" or "single-shot" voting (a practice that would allow black voters to cast one vote for their candidate of choice as opposed to voting for three candidates in a three-member, multi-member district) may result in the election of a black candidate even when voting in the district is racially polarized. *Thornburg*, 478 U.S. at 38 n. 5, 57. Thus, the finding in *Thornburg* that legally significant polarized voting was absent in a multi-member district does not preclude a strong basis in evidence of racially polarized voting in Durham County as related to single-member districts.

c. Counties included in *Cromartie* First Congressional District: Granville (*See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district

2001 CD 1: Granville
2003 SD 20: Durham
2003 HD 29: Durham
2003 HD 31: Durham

(Map Notebook, Congress Zero Deviation, 2003 Senate, 2009 House; First Frey Aff. Exs. 10, 11, 12; Second Fry Aff. Exs. 34, 39, 60)

e. Section 5 Counties: Granville (Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006- 2010:

2008 2010 SD 20: Durham
2008 HD 29: Durham
2010 HD 31: Durham

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunch and confirmed as continuing to experience statistically significant racially polarized voting:

Durham, Granville

(First Rucho Aff. Ex. 10, pp. 1-16)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSI and Democratic leaders:

SCSI Congress CD 1: Granville
Congressional F&L CD 1: Granville
SCSI SD 20: Durham

F&L SD 20: Durham
PSD SD 20: Durham
SCSI HD 29, 31: Durham
F&L HD 29, 31: Durham
PHD HD 29, 31: Durham

(Map Notebook, SCSI Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

41. 2011 Senate District 21

TBVAP: 51.43% (First Frey Aff. Ex. 10)
Counties: Cumberland and Hoke (Map Notebook, Rucho Senate 2)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that the district is a racial gerrymander. (*Dickson* Pls. Am. Compl. ¶¶ 497-500, 510-14; *NAACP* Pls. Am. Compl. 911422-34, 472-79)

b. Counties included in *Gingles* districts: None

c. Counties included in *Cromartie* First Congressional District: None

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2003 SD 21: Cumberland
2009 HD 42: Cumberland
1009 HD 43: Cumberland

(Map Notebook, 2003 Senate, 2003 House; First Frey Aff. Exs. 10, 11; Second Frey Aff. Exs. 34, 39)

e. Section 5 Counties: Cumberland and Hoke (Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2010 SD 21: Cumberland

(First Rucho Aff. ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell. and confirmed as continuing to experience statistically significant racially polarized voting:

Cumberland, Hoke

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ SD 21: Cumberland
F&L SD 21: Cumberland
PSD SD 21: Cumberland
SCSJ HD 42, 43: Cumberland
F&L HD 42, 43: Cumberland
PHD HD 42, 43: Cumberland

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; Second Frey Aff. Exs. 36-38, 41-43)

42. 2011 Senate District 28

TBVAP 56.49% (First Frey Aff. EL 10)
County: Guilford (Map Notebook, Rucho Senate 2)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that the district is a racial gerrymander. (*Dickson* Pls. Am. Compl. 497-500, 510-14; *NAACP* Pls. Am. Compl. II 422-34, 472-79)

b. Counties included in *Gingles* districts: None

c. Counties included in *Cromartie* First Congressional District: None

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 12: Guilford
2009 SD 28: Guilford
2009 HD 58: Guilford
2009 HD 60: Guilford

(Map Notebook, Congress Zero Deviation, 2003 Senate, 2009 House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 County: Guilford (Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 20062010:

2008 and 2010 CD 12: Guilford
2006 and 2010 CD 13: Guilford
2010 SD 28: Guilford
2010 HD 58: Guilford
2006 and 2010 RD 60: Guilford

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Guilford

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ CD 12: Guilford
F&L CD 12: Guilford
SCSJ SD 28: Guilford
F&L SD 28: Guilford
PSD SD 28: Guilford
SCSJ HD 58, 60: Guilford
F&L HD 58, 60: Guilford
PHD HD 58, 60: Guilford

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; Possible Senate and Possible House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

43. 2011 Senate Districts 38 and 40

TBVAP: 38 (52.51%) (First Frey Aff. Ex. 10)
40 (51.84%) (First Frey Aff. Ex. 10)
County: Mecklenburg (Map Notebook, Rucho Senate 2)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that these districts are racial gerrymanders. *(Dickson* Pls. Am. Compl. ¶11497-500, 510-514; *NAACP* Pls. Am. Compl. 422-34, 472-79)

b. County included in *Gingles* districts: Mecklenburg *(See* General Findings of Fact, No. 1)

c. County included in *Crornartie* First Congressional District: None

d. County that was part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 12: Mecklenburg
2003 SD 38: Mecklenburg
2003 SD 40: Mecklenburg
2003 HD 99, 100, 101, 102; 107, Mecklenburg

(Map Notebook, Congress Zero Deviation, 2003 Senate, 2009 House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 County: No

f. County included in Dr. Block's analysis of district elections from 2006-2010:

2008, 2010 CD 12: Mecklenburg
2006, 2008, 2010 SD 40: Mecklenburg
2008 SD 38: Mecklenburg
2008, 2010 HD 107: Mecklenburg
2010 HD 101: Mecklenburg

(First Rucho Aff. Ex. 8, pp. 1-7)

g. County analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Mecklenburg

(First Rucho Aff. Ex. 10, pp. 1-15, 22)

h. County included in majority-black or majority-minority district in plans proposed by SCSI and Democratic leaders

SCSJ CD 12: Mecklenburg
F&L CD 12: Mecklenburg
SCSJ SD 38.40: Mecklenburg

F&L SD 38.40: Mecklenburg
PSD SD 38.40: Mecklenburg
SCSJ HD 99: Mecklenburg
SCSJ HD 100: Mecklenburg
SCSJ HD 101: Mecklenburg
SCSJ HD 102: Mecklenburg
SCSJ HD 107: Mecklenburg
F&L HD 99: Mecklenburg
F&L HD 101: Mecklenburg
F&L HD 102: Mecklenburg
F&L HD 107: Mecklenburg
PHD HD 25: Mecklenburg
PHD HD 99: Mecklenburg
PHD HD 100: Mecklenburg
PHD HD 101 Mecklenburg
PHD HD 102: Mecklenburg
PHD HD 107: Mecklenburg

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs, 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

44. 2011 House District 5

TBVAP 54.17% (First Frey Aff. Ex. 11)
Counties: Bertie, Gates, Hertford, Pasquatank (Map Notebook, LewisDollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

The *NAACP* plaintiffs have alleged that 2011 District 5 is a racial gerrymander. *NAACP* Pl. Am. Compl. 9t9[ 410-21, 464-71; The *Dickson* Plaintiffs have not challenged this district. *Dickson* Pl. Am. Compl. ¶9[ 493-96, 505-509.

b. Counties included in *Gingles* districts: Bertie, Hertford, Gates *(See* General Findings of Fact, No. 1)

c. Counties included in *Cromartie* First Congressional District: First District: Bertie, Hertford, Gates

*(See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD I: Bertie, Gates, Hertford, Pasquatank
2003 SD 4: Bertie, Gates, Hertford
2009 HD 5: Bertie, Gates, Hertford

(Map Notebook Congress Zero Deviation, 2003 Senate, 2003 House; First Frey Aff. Exs, 10, 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 Counties: Bertie, Hertford, Gates, Pasquatank

(Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006- 2010

2010 CD 1: Bertie, Gates, Hertford, Pasquatank
2010 SD 4: Bertie, Gates, Hertford
2006 HD 5: Bertie, Gates, Hertford

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Bertie, Gates, Hertford, Pasquatank (First Rucho Aff. Ex. 10, pp. 1-15)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ CD 1: Bertie, Gates, Hertford, Pasquatank
F&L CD 1: Bertie, Gates, Hertford, Pasquatank
SCSJ SD 4: Bertie, Gates, Hertford
F&L SD 3: Bertie
F&L SD 4: Gates, Hertford
PSD SD 4: Bertie, Gates, Hertford
SCSJ HD 5: Bertie, Hertford, Gates, Pasquatank
F&L HD 5: Bertie, Gates, Hertford
PHD HD 5: Bertie, Gates, Hertford

(Map Notebook, SCSI Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-42, 66, 67)

45. 2011 House District 7

TBVAP: 50.67% (First Frey Aff. Ex. 11)
Counties: Franklin, Nash (Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

The *Dickson* plaintiffs have alleged that 2011 HD 7 is a racial gerrymander. *Dickson* Pls. Am. Compt. ITI 493-96, 505-509; The *NAACP* Plaintiffs have not challenged this district. *NAACP* Pls. Am. CompI. 410-21, 464-71.

b. Counties included in *Gingles* districts: Nash

(*See* General Findings of Fact, No. 1)

c. Counties included in *Cromartie* First Congressional District: None

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 1: Nash 2009 HD 7: Nash

(Map Notebook, Congress Zero Deviation and 2009 House Plan; First Frey Aff. Exs. 11, 12; Second Frey Aff. Exs. 39, 60)

e. Section 5 County: Franklin, Nash (Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006- 2010: 2010 CD 1: Nash

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Franklin and Nash

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority district in plans proposed by SCS.1 and Democratic leaders

SCSJ CD 1: Franklin, Nash
F&L CD 1: Franklin, Nash
PSD SD 3: Nash
SCSJ HD 7: Nash
F&L HD 7: Nash

PHD HD 7: Nash

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 11, 12; Second Frey Aff. Exs. 38, 41-43, 66, 67

46. 2011 House District 12

TBVAP: 50.60% (First Frey Aff. Ex. 11)
Counties: Craven, Greene, Lenoir (Map Notebook, Lewis-Dollar-Dockham, 4)

a. Which group of plaintiffs have challenged this district?

The *Dickson* plaintiffs have alleged that this district is a racial gerrymander. *Dickson* Pls. Am. Compl. IN 493-96, 505-509; The *NAACP* Plaintiffs have not challenged this district. *NAACP* Pls. Am. Compl. 1ff 410-21, 464-71.

b. Counties included in *Gingles* districts: None

c. Counties included in *Cromartie* First Congressional District: Craven, Greene, Lenoir *(See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 1: Craven, Greene, Lenoir
2009 HD 12: Craven, Lenoir

(Map Notebook, Congress Zero Deviation and 2009 House Plan; First Frey Aff. Exs. 11, 12; Second Frey Aff. Exs. 39, 60)

e. Section 5 Counties: Craven, Greene, Lenoir (Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 20062010:

2010 CD 1: Craven, Greene, Lenoir
2006-2010 HD 12: Craven, Lenoir

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunel' and confirmed as continuing to experience statistically significant racially polarized voting:

Craven, Greene, Lenoir

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders

SCSJ CD 1: Craven, Greene, Lenoir
F&L CD 1: Craven, Greene, Lenoir
SCSJ HD 12: Craven, Greene, Lenoir
F&L HD 12: Craven, Greene, Lenoir
PHD HD 12: Craven, Lenoir

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; Second Frey Aff. Exs. 41-43; 66, 67)

47. 2011 House District 21

TBVAP: 51.90% (First Frey Aff. Ex. 11)
Counties: Duplin, Sampson, Wayne (Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

Both sets of plaintiffs alleged that the district is a racial gerrymander. *Dickson* Pls. Am, Compl.11 493-96, 505-509; *NAACP* Pls. Am. Compl. 11 410-21, 464-71.

b. Counties included in *Gingles* districts: None

c. Counties included in *Cromartie* First Congressional District: Wayne *(See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD I: Wayne
2009 HD 21: Sampson, Wayne

(Map Notebook, Congress Zero Deviation; 2009 House Map; First Frey Aff. Exs. 11, 12; Second Frey Aff. Exs. 39, 60)

e. Section 5 County: Wayne (Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 20062010

2010 CD 1: Wayne
2010 HD 21: Sampson, Wayne

(First Rucho Aft Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunel' and confirmed as continuing to experience statistically significant racially polarized voting:

Duplin, Sampson, Wayne

(First Rucho Aff. Ex. 10, pp. 1-14)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders

SCSJ CD 1: Wayne P&L CD 1: Wayne
SCSJ HD 21: Duplin, Sampson, Wayne
F&L HD 21: Sampson, Wayne

PHD HD 21: Sampson, Wayne

(Map Notebook, SCSI Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 41-43, 66, 67)

48. 2011 House District 24

TB VAP: 57.33% (First Frey Aff. Ex. 11)
Counties: Pitt, Wilson (Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

Both groups of plaintiffs have alleged that this district is a racial gerrymander. (*Dickson* Pls. Am. Compl. 191493-95, 505-509; *NAACP* Pls. Am. Compl. 410-21, 464-71)

b. Counties included in *Gingles* districts: Wilson (*See* General Findings of Fact, No. 1)

c. Counties included in *Cromartie* First Congressional District: Pitt, Wilson (*See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 1: Pitt, Wilson SD 3: Pitt
2009 HD 8: Pitt
2009 HD 24: Wilson

(Notebook, Congress Zero Deviation, 2003 Senate Plan, 2009 House Plan; First Frey Aff. Exs. 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 County: Pitt, Wilson (Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 20062010: 2008 SD 5: Pitt

2010 SD 5: Pitt, Wilson

(First Rucho Aff. Ex. 6, pp. 1-7)

g. Counties analyzed by Dr. Brunel' and confirmed as continuing to experience statistically significant racially polarized voting:

Pitt, Wilson

(First Rucho Aff. Ex. 10, pp. 1-15)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ CD 1: Pitt, Wilson
F&L CD 1: Pitt, Wilson
SCSJ SD 3: Pitt, Wilson
F&L SD 3: Wilson
PSD SD 3: Pitt
SCSJ HD 8: Pitt
SCSJ HD 24: Wilson
F&L HD 8: Pitt
F&L HD 24: Wilson
PHD HD 8: Pitt
PHD. HD 24: Wilson

(Map Notebook, .SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; Possible Senate and House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

49. 2011 House Districts 29 and 31 (Durham County)

TBVAP: HD 29 (51.34%) (First Frey Aff. Ex. 11)
HD 31 (51.81%) (First Frey Aff. Ex. 11)
County: Durham

(Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged these districts?

Both groups of plaintiffs challenged this district. *(Dickson* Pls. Am. Compl. ¶9[ 493-96, 505-509; *NAACP* Pis. Am. Compl. 11 410-21, 464-71)

b. County included in *Gingles* districts: None, but see but see Finding of Fact 41.b, *supra.*

c. County included in *Cromartie* First Congressional District: None

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2003 SD 20: Durham
2009 HD 29: Durham
2009 HD 31: Durham

(Map Notebook, 2003 Senate Plan and 2009 House Plan; First Frey Aff. Exs, 10, 11; Second Frey Aff. Exs. 34, 39)

e. Section 5 County: No

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2008 SD 20: Durham
2009 HD 29: Durham
2010 SD 20: Durham
2010 HD 31: Durham

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Durham

(First Rucho Aff. Ex. 10, pp. 1-16)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders

SCSJ SD 20: Durham
F&L SD 20: Durham
RSP SD 20: Durham
SCSJ HD 29: Durham
SCSJ HD 31: Durham
F&L HD 29: Durham
F&L HD 31 Durham
PHD HD 29: Durham
PHD HD 31 Durham

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11; Second Frey Aff. Exs. 36-38, 41-43)

50. 2011 House District 32

TBVAP: 50.45% (First Frey Aff. Ex. 11)
Counties: Granville, Vance, Warren

(Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

The *NAACP* plaintiffs allege that this district was a racial gerrymander. (*NAACP* Pls. Am. Comp. 9191 410-12, 464-71) The *Dickson*

plaintiffs did not challenge this district. (*Dickson* Pls. Am. Compl. 9N493-96, 510-14)

b. Counties included in *Gingles* districts: None

c. Counties included in *Cromartie* First Congressional District: Granville, Vance, Warren (*See* General Findings of Fact, No. 6)

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 1: Granville, Vance, Warren
2003 HD 27: Vance, Warren

(Map Notebook, Congress Zero Deviation, 2009 House Plan; First Frey Aff. Exs 11, 12; Second Frey Aff. Exs. 39, 60)

e. Section 5 County: Granville, Vance (Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2010 CD 1: Granville, Vance, Warren (First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brune11 and confirmed as continuing to experience statistically significant racially polarized voting:

Granville, Vance, Warren

(First Rucho Aff. Ex. 8, pp. 1-7)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ CD is Granville, Vance, Warren
F&L CD 1: Granville, Vance, Warren

SCSJ SD 4: Vance, Warren
F&L SD 4: Vance, Warren
PSD SD 4: Warren
SCSJ HD 27: Vance, Warren
PHD HD 27: Warren

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

51. 2011 House Districts 33 and 38

TBVAP: HD 33 (51.42%) (First Frey Aff. Ex. 11)
HD 38 (51.37%) (First Frey Aff. Ex. 11)
Counties: Wake

(Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged these districts?

The *Dickson* plaintiffs have challenged HD 33 but not HD 38. *(Dickson* Pls. Am. Comp1.191493-96, 505-509) The *NAACP* plaintiffs have challenged HD 38 but not HD 33. *(NAACP* Pis. Am. Comp'. IN 410-21, 464-71)

b. County included in *Gingles* districts: Wake *(See* General Findings of Fact, No. 1)

c. County included in *Cromartie* First Congressional District: None

d. County that was part of a 2001/2003/2009 majority-black or majority-minority district:

2003 SD 14: Wake 2003 HD 33: Wake

(Map Notebook, 2003 Senate Plan and 2009 House Plan; First Frey Aff. Exs. 10, 11; Second Frey Exs. 34, 39)

e. Section 5 County: No

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2008 SD 14: Wake
2008 HD 33: Wake
2010 SD 14: Wake
2010 HD 33: Wake

(First Rucho Aff. Ex. 8, pp. 1-7)

g. County analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Wake

(First Rucho Aff. Ex. 10, pp. 1-14, 16-18)

h. Counties included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ SD 14: Wake
F&L SD 14: Wake
PSD SD 14: Wake
SCSJ HD 33: Wake
F&L HD 33: Wake
PHD HD 33: Wake

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; Second Frey Aff. Exs. 36-38, 41-43, 66-67)

i. County included in majority-black superior court district in recently enacted Superior Court plan: Wake

(*See:*http://www.wakegov.com/gis/services/Documents/SuperiorCourt_24x24.pdf; N.C. Gen. Stat. §§ 7A-41(b)(3)-(6b))

52. 2011 House District 42

TBVAP: 52.56% (First Frey Aff. Ex. 11)
Counties: Cumberland

(Map Notebook, Lewis-Dollar-Dockham 4

a. Which group of plaintiffs have challenged this district?

Both groups of plaintiffs challenged HD 4. (*Dickson* Pls. Am. Compl. fi 493-96, 505-509; *NAACP* Pls. Am. Compl. In 410-21, 464-71) Neither group of plaintiffs challenged 2011 HD 43, a majority-black House district in Cumberland County that adjoins HD 42. *(Id.)*

b. Counties included in *Gingles* districts: None

c. Counties included in *Cromartie* First Congressional District: None

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2003 SD 21: Cumberland
2009 HD 42: Cumberland
2009 HD 43: Cumberland

(Map Notebook, 2003 Senate Plan and 2009 House Plan; First Frey Aff. Exs. 10, 11; Second Frey Aff. Exs. 34, 39)

e. Section 5 County: Cumberland (Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2010 SD 21: Cumberland
2010 SD 21: Cumberland

(First Rucho Aff. Ex. 8, pp. 1-7)

g. County analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Cumberland

(First Rucho Aff. Ex. 10, pp. 1-14)

h. County included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ HD 42: Cumberland
SCSJ HD 43 Cumberland
F&L HD 42 Cumberland
F&L HD 43 Cumberland
PHD HD 42 Cumberland
PHD HD 43 Cumberland

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and. House; Second Frey Aff. Exs, 36-38, 41-43)

53. 2011 House District 48

TBVAP: 51.27% (First Frey Aff. Ex. 11) Counties: Hoke, Richmond, Robeson, Scotland

(Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

Both groups of plaintiffs have challenged this district. (*Dickson* Pls. Am. Compl. 493-96, 505-509; *NAACP* Pls. Am. Compl. 410-21, 464-71)

b. Counties included in *Gingles* districts: None

c. Counties included in *Crornartie* First Congressional District: None

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2009 HD 48: Hoke, Robeson, Scotland

(Map Notebook, 2009 House Map; First Frey Aft', Ex. 11; Second Frey Aff. Ex. 39)

e. Section 5 County: Hoke, Robeson, Scotland (Churchill Dep. Ex. 46, p. 6)

f. Counties included in Dr. Block's analysis of district elections from 2006- 2010:

2010 HD 48: Hoke, Robeson, Scotland

(First Rucho Aff. Ex. 8, pp. 1-7)

g. Counties analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Hoke, Richmond, Robeson, Scotland (First Rucho Aff. Ex. 10, pp. 1-14)

h. County included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ HD 48: Hoke, Robeson, Scotland
F&L HD 48: Hoke, Robeson, Scotland
PHD HD 48: Hoke, Richmond, Robeson, Scotland

(Map Notebook, SCSJ House; F&L House; Possible House; First Frey Aff. Ex. 11; Second Frey Aff. Exs. 41-43)

54. 2011 House District 57

TBVAP: 50.69% (First Frey Aff. Ex. 11)
Counties: Guilford

(Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

Both groups of plaintiffs challenged this district. (*Dickson* Pls. Am. Compl. ME 493-96, 505-509; *NAACP* Pls. Am. Corapl. 191410-21, 464-71) Neither group of plaintiffs challenged two other majority-black districts located in Guilford County, 2011 HD 58 (TBVAP: 51.41%) and 2011 HD 60 (TBVAP: 54.36%). (*Id.*)

b. County included in *Gingles* districts: None

c. County included in *Crornartie* First Congressional District: None

d. County that was part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 12: Guilford
2003 SD 28: Guilford
2009 HD 58: Guilford
2009 HD 60: Guilford

(Map Notebook, Congress Zero Deviation, 2003 Senate; 2009 House; Frist Frey Aff. Exs. 10-12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 County: Guilford (Churchill Dep. Ex. 46, p. 6)

f. County included in Dr. Block's analysis of district elections from 20062010:

2010 HD 60: Guilford
2008 CD 12: Guilford
2010 CD 12: Guilford
2010 SD 28: Guilford
2010 HD 58: Guilford
2010 HD 60: Guilford

(First Rucho Aff. Ex. 8, pp. 1-8)

g. County analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting: Guilford

(First Rucho Aff. Ex. 10, pp. 1-14, 19, 20)

h. County included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ CD 12: Guilford
F&L CD 12: Guilford
SCSJ SD 28: Guilford
F&L SD 28: Guilford
PSD SD 28: Guilford
SCSI HD 58: Guilford
F&L HD 58: Guilford
PSD HD 58: Guilford
SCSJ HD 60: Guilford
F&L HD 60: Guilford
PHD HD 60: Guilford

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; Possible Senate and House; First Frey Aff. Ex. 11, 12, 13; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

55. House Districts 99, 102, 106, 107

TBVAP: HD 99 (54.65%) (First Frey Aff. Ex. 11)
HD 102 (53.53%) (First Frey Aff. Ex. 11)
HD 106 (51.12%) (First Frey Aff. Ex. 11)
HD 107 (52.52%) (First Frey Aff. Ex, 11)
Counties: Mecklenburg

(Map Notebook, Lewis-Dollar-Dockham 4)

a. Which group of plaintiffs have challenged this district?

The *NAACP* Plaintiffs challenged HD 99, 102, 106, and 107. *(NAACP* Pls. Am. Compl. TIE 410-21, 464-71) The *Dickson* Plaintiffs challenged only HD 99 and 107. *(Dickson* Pls. Am. Compl. ¶91493.96, 505-509) Neither group of plaintiffs challenged HD 101 (TBVAP: 51.31%).

b. Counties included in *Gingles* districts: Mecklenburg *(See* General Findings of Fact, No. 1)

c. Counties included in *Crornartie* First Congressional District: None

d. Counties that were part of a 2001/2003/2009 majority-black or majority-minority district:

2001 CD 12: Mecklenburg
2003 SD 38: Mecklenburg
2003 SD 40: Mecklenburg
2009 HD 99: Mecklenburg
2009 HD 100: Mecklenburg
2009 HD 101: Mecklenburg
2009 HD 102: Mecklenburg
2009 HD 106: Mecklenburg
2009 HD 107: Mecklenburg

(Map Notebook, Congress Zero Deviation, 2003 Senate Plan, 2009 House Plan; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 34, 39, 60)

e. Section 5 County: None

f. Counties included in Dr. Block's analysis of district elections from 2006-2010:

2006 SD 40: Mecklenburg
2008 CD 12: Mecklenburg
2008 SD 38: Mecklenburg
2008 SD 40: Mecklenburg
2008 CD 12: Mecklenburg
2010 HD 107: Mecklenburg
2010 SD 40: Mecklenburg
2010 HD 101: Mecklenburg
2010 HD 107: Mecklenburg

(First Rucho Aff. Ex. 8, pp. 1-8)

g. County analyzed by Dr. Brunell and confirmed as continuing to experience statistically significant racially polarized voting:

Mecklenburg

(First Rucho Aff. Ex. 10, pp. 1-14, 22)

h. County included in majority-black or majority-minority district in plans proposed by SCSJ and Democratic leaders:

SCSJ CD 12: Mecklenburg
F&L CD 12: Mecklenburg
SCSJ SD 38: Mecklenburg
SCSJ SD 40: Mecklenburg
F&L SD 38: Mecklenburg
F&L SD 40: Mecklenburg
PSD SD 38: Mecklenburg
PSD SD 40: Mecklenburg

SCSJ HD 99: Mecklenburg
SCSJ HD 100: Mecklenburg
SCSJ HD 101: Mecklenburg
SCSJ HD 102: Mecklenburg
SCSJ HD 107: Mecklenburg
F&L HD 99: Mecklenburg
F&L HD 101: Mecklenburg
F&L HD 102: Mecklenburg
F&L HD 107: Mecklenburg
PHD HD 25: Mecklenburg
PHD HD 99: Mecklenburg
PHD HD 100: Mecklenburg
PHD HD 101: Mecklenburg
PHD HD 102: Mecklenburg
PHD HD 107: Mecklenburg

(Map Notebook, SCSJ Congress, Senate, House; Congressional F&L, F&L Senate, F&L House; Possible Senate and House; First Frey Aff. Exs. 10, 11, 12; Second Frey Aff. Exs. 36-38, 41-43, 66, 67)

III. Election Results in 2003 Senate Districts, 2009 House Districts, and 2001 Congressional Districts that Were Majority-Minority Coalition Districts.

56. Plaintiffs' post-enactment evidence regarding the alleged absence of racially polarized voting consists of election results in 2001/2003/2009 districts with a TBVAP under 50%, and plaintiffs' post-enactment expert's opinions regarding these districts. (Plaintiffs' Memorandum in Support of Joint Motion for Summary Judgment ("P1. Mem.") (5 October 2012), ¶9[ 68-82; Churchill Dep. Ex. 81, Congressional Races with Minority Candidates, 1992-2010; Churchill Dep. Ex. 82, Senate Legislative Races with Minority Candidates, 2006-2010; Churchill Dep. Ex. 83, House legislative Races with Minority Candidates, 2006-

2010; Pl. Trial Notebook, Ex. 13, First Aff. of Allan Lichtman (28 January 2012). These 2001/2003/2009 under 50% TBVAP districts included Senate Districts 14, 20, 21, 28, 38, and 40; House Districts 12, 21, 29, 31, 48, 99 and 107; and Congressional Districts 1 and 2. (Pl. Mem. 1[1 68-82). Plaintiffs did not offer, post-enactment, election results as evidence showing the absence of racially polarized voting in the following challenged districts: Senate Districts 4 and 5; House Districts 5, 7, 24, 32, 33, 38, 42, 57, 102, and 106.

57. The parties in *Strickland* stipulated that the area encompassed by 2003 House District 18 continued to experience racially polarized voting. *Strickland*, 556 U.S. at 39 n. 3. Thus, there was no evidence presented to the Court showing either the presence or absence of racially polarized voting in the area encompassed by 2003 House District 18. In dicta, the Court expressed skepticism about whether racially polarized voting could exist in a majority-white crossover district where a black candidate had enjoyed sustained success. *Id.* at 16, 24. However, this observation is no different from the Supreme Court's statement that racially polarized voting could not be present in a majority-white multi-member crossover district in which black candidates have been elected in six consecutive elections. *Thornburg v. Gingles*, 478 U.S. 30, 77 (1986). *Strickland* expressly did not address majority-minority coalition districts. *Strickland*, 556 O.S. at 13.

58. The fact that incumbent black candidates or strong black candidates have won elections in majority-minority coalition districts with TBVAP between 40% and 49.99% does not prove the absence of racially polarized voting. In *Gingles*, almost all of the challenged districts that were found to be unlawful

were majority-white. (Def. Desg. P.21, n. 1) Further, in *Cromartie*, the 1997 version of the First Congressional District was found to be a valid § 2 remedy despite the fact that the district's black voting age population was under 50%. (Def. Desg. pp. 6, 7),

2003 Senate District 14: Wake County

59. The 2003 version of Senate District 14 was located in Wake County. There is no evidence in the legislative record disputing the conclusion of Dr. Block and Dr. Brunell that racially polarized voting is present in Wake County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14, 16-18; Def. Desg. p. 27, f. and g.) In all versions of District 14 in the previous or alternative plans, which plaintiffs describe as legal, the non-Hispanic white population for Senate District 14 is below 50%: 2003 Senate 14 (41.07%); 2011 SCSJ Senate 14 (34,84%); Senate F&L 14 (44.36%); and LBC Senate 14 (44.53%). The evidence shows that the 2003 version of Senate District 14 was not "less than majority-minority." (P1. Mem. 65; Second Frey Aff. 191 12-13, Exs. 34, 36-38) Nor was 2011 Senate District 14 a majority-white crossover district.

60. In North Carolina, whites make up 53.37% of the registered Democrats while African Americans constitute 41.38% of the registered Democrats. (Second Frey Aff. ¶¶ 16-17, Exs. 44, 46-48) If racially polarized voting no longer existed in Wake County, then the percentage of white and black registered Democrats should approximate the statewide average. Instead, in the 2003 version of Senate District 14, African Americans constituted a super majority (68.26%) of all registered Democrats. (Second Frey Aff. 9 16, Ex. 44) In the 2011 SCSJ Senate 14, African Americans constitute 72.31% of the registered Democrats; in the 2011 F&L Senate 14 Plan, African

Americans constitute 68.11% of registered Democrats; and in the LBC Senate 14, African Americans constitute 68.02% of the registered Democrats. (Second Frey Aff. ¶¶ 16-17, Exs. 44, 46-48) In comparison, the statewide percentage of Democrats who are African

Americans is only 41.38%.[40]The strategy of cracking majority-TBVAP districts to create coalition and influence districts, so long as blacks constitute super-majorities among registered Democrats, and recommended by Justices Souter and Ginsburg in *LULAC,* was rejected by the Court in *Bartlett.*

61. In the 2011 SCSJ Senate 14 Plan, African Americans constituted 52.62% of registered party voters, not the 21.63% state average. (Second Frey Aff. ¶ 17, Ex. 46) In the 2003 version of Senate District 14, whites constituted a minority of the district's registered voters (46.41%). Similarly, white voters are a minority of the registered voters in the F&L version of District 14 (48.52%) and the LBC version (48.96%) (Second Frey Aff. ¶ 17, Exs. 47, 48)

62. Under the 2009 House Plan, House District 33, located in Wake County, had a TBVAP of 51.74%. (Second Frey Aff. ¶¶ 16, Ex, 44) All 2011 alternative plans recommended that House District 33 be created with a majority-TBVAP district: SCSJ House 33 (56.45%); F&L House 33 (52.42%) LBC House 33 (50.66%) (Second Frey Aff. ¶¶ 24, Ex. 11) Plaintiffs have offered no evidence explaining why a majority-

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[40] Second Frey Affidavit, Exs. 34-43 (voting age percentages for VRA districts by race for all Senate and House Plans) and Exs. 44-53 (registration totals for VRA districts for all Senate and House plans).

TBVAP House district is necessary in Wake County but a majority-TBVAP Senate district is not.

63. In 2004, African American candidate Vernon Malone defeated his Republican opponent 45,727 to 25,595 (+20,132); in 2006, Malone defeated his Republican opponent 26,404 to 13,644 (+12,760); and in 2008, Malone defeated his Republican opponent 67,823 to 29,835 (+37,988). In 2010, African American candidate Dan Blue defeated his Republican opponent 40,746 to 21,067 (+19,679). In each of these four elections, the actual margin of victory for the African American Democrat was less than the population deviation for the district under the 2010 Census (+41,804). (Churchill Aff. ¶¶ 1-7, Ex. 2)

64. In the 2004 election cycle, African American candidate Vernon Malone raised $137,042 and spent $165,598.84. His Republican opponent raised and spent $4,875.00. In the 2006 cycle, Sen. Malone raised $281,835 and spent $276,380. His Republican opponent raised $1,061 and spent $1,031.85. In the 2008 cycle, Sen. Malone raised $108,084 and spent $74,721. His Republican, opponent raised and spent $1,692.54. Finally, in the 2010 cycle, African American candidate Dan Blue raised $187,613 and spent $176,464. His Republican opponent raised $646.61 and spent $547.66. (Churchill Aff. ¶¶ 1-3, Ex. 2)

65. At the time of the 2011 Session of the North Carolina General Assembly, Sen. Blue had served one term as a state Senator and 14 terms as a state Representative. (Churchill Aff. ¶¶ 8, Ex. 4.) The Court can take judicial notice that Sen. Blue served as Speaker of the House from 1991 to 1995. *(See* http://projects.newsobserver.com/under_the_dome/profiles/ dan_blue)

2003 Senate Districts 20: Durham County

66. The 2011 version of District 20 includes all of Granville County, a covered jurisdiction under § 5 of the VRA, and a portion of Durham County. The 2003 Senate District 20 was located in Durham County. There is no evidence in the legislative record disputing Dr. Block's and Dr. Brunell's conclusions that racially polarized voting exists in Durham and Granville Counties. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14, 16-18; Def. Desg. p. 30, f. and g.) For the first time in history, the 2011 version of District 20 provides African American voters in Granville County with an equal opportunity to elect their preferred candidate of choice.

67. In all versions of District 20 in the previous or alternative plans, which plaintiffs describe as legal, the non-Hispanic white population is below 50%: 2003 Senate (39.86%); 2011 SCSJ (40.21%); 2011 F&L Senate (43.32%); 2011 LBC (37.29%). The evidence shows that the 2003 version of Senate District 20 was not "less than majority-minority." (Pl. Mem. 65; Second Frey Aff. ¶¶ 12-13, Exs. 34, 36-38) Moreover, this district was not a majority-white crossover district.

68. In the 2003 version of Senate District 20, 63.70% of registered Democrats were African American. African Americans constituted 61.37% of registered Democrats in the 2011 SCSJ version of District 20, 57.97% in the F&L version, and 63.27% in the LBC version. (Second Frey Aff: ¶¶ 16-17, Exs. 44, 46-48) In comparison, the statewide percentage of Democrats who are African Americans is only 41.38%.

69. Whites were a minority of the registered voters in the 2003 version of Senate District 20 (45.18%). In

all three 2011 alternative versions of Senate District 20, whites are a minority of the total registered voters: SCSJ (46.34%); F&L (49.77%); LBC (43.24%). (Second Frey MEI p. 17, Ex. 45-48)

70. The SCSJ Plan recommended that House District 31, located in Durham County, be established with a TBVAP of 51.69%. (First Frey Aff. ¶¶ 24, Ex. 11) Plaintiffs have offered no evidence explaining why a majority-TBVAP House district is necessary in Durham County, but a majority-TBVAP Senate district in Durham and Granville is not.

71. The 2003 version of District 20 was located exclusively in Durham County. There were no prior election results for a majority-TBVAP or a 40% plus TBVAP district located in a portion of Durham and all of Granville County,

72. There were contested general elections for Senate District 20 in 2004, 2008, and 2010. In each of these contests, the margin of victory for the African American Democrat was in excess of the size of the population deviation for the district under the 2010 Census (-9,086). In the 2004 election cycle, African American candidate Jeanne Lucas raised $29,006.50 and spent $31,861.89. Her Republican opponent did not file campaign disclosure reports because any funds raised by the Republican were below the amount that triggers a reporting obligation. There was no contested election in this district during the 2006 election cycle. In the 2008 election cycle, African American candidate Floyd B. McKissick, Jr. raised $36,619 and spent $21,165. He was opposed by Republican and Libertarian candidates neither of whom raised enough money to be required to file campaign disclosure reports. In the 2010 election cycle, Sen. McKissick raised $28,827 and spent $35,440. His Republican opponent did not

file campaign disclosure reports. (Churchill Aff. ¶¶ 1-7, Ex. 2.)

2003 Senate Districts 21: Cumberland County

73. The 2003 version of District 21 was located in Cumberland County. The 2011 version of District 21 includes Hoke County as well. Both counties are covered by § 5 of the VRA. There is no evidence in the legislative record disputing Dr. Block's and Dr. Brunell's conclusions that racially polarized voting exists in Cumberland County, and Dr. Brunell's conclusion that racially polarized voting exists in Hoke County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14; Def. Desg. p. 32 f. and g,) For the first time in history, the 2011 version of Senate District 21 provides African American voters in Hoke County with an equal opportunity to elect their preferred candidates of choice. There were no past election results for a majority-TBVAP district that included Hoke County.

74. In all versions of Senate District 21 in the previous or alternative plans, which plaintiffs describe as legal, the non-Hispanic white population is below 50%: 2003 Senate 21 (41.63%); SCSJ Senate 21 (40.43%); F&L Senate 21 (41.62%); LBC Senate 21 (42.09%). The evidence shows that the 2003 version of Senate District 20 was not "less than majority-minority." (Pl. Mem. 91 65; Second Frey Aff. ¶¶ 12-13, Exs. 34, 3638). Nor was 2003 Senate District 20 a majority-white crossover district.

75. In the 2003 version of Senate District 21, African Americans constituted 73.14% of the registered Democrats. All alternative plans created super-majorities of registered Democrats who are African American: SCSJ Senate 21 (73.41%); F&L Senate 21 (73.09%); LBC Senate 21 (72.29%). (Second

Frey Aff. ¶¶ 16-17, Exs. 44, 46-48) In comparison, the statewide percentage of Democrats who are African Americans is 4L38%.

76. Whites were a minority of the registered voters in the 2003 version of Senate District 21 (37.40%). Whites are also a minority of the registered voters in all three of the 2011 alternatives: SCSJ Senate 21 (37.17%); F&L Senate 21 (37.52%); and LBC Senate 21 (38.41%). (Second Frey Aff. ¶¶ 12-13, Exs. 34, 36-38)

77. African Americans are a majority of the registered voters in 2003 Senate 21 (51.15%); 2011 SCSJ District 21 (51.52%); F&L Senate 21 (51.13%); and LBC Senate 21 (50.31%). (Second Frey Aff. 19116-17, Exs. 44, 46-48)

78. The 2003 version of House District 43, also located in Cumberland County, had a TBVAP of 54.69%. All 2011 alternative House Plans recommended that this district be recreated with a TBVAP in excess of 50%: SCSJ House 43 (54.70%) F&L House 43 (54.70%); LBC House 43 (51.51%). (First Frey Aff. 24, Ex. 11) Plaintiffs have offered no evidence explaining why a majority-TBVAP House district is necessary in Cumberland County, but a majority-TBVAP Senate District is not.

79. There are no past election results for a 40% plus TBVAP-district or a majority-TBVAP district that includes Hoke and Cumberland counties.

80. In the 2004 General Election, African American Democratic candidate Larry Shaw defeated his Republican opponent 27,866 to 16,434 (+11,432) with a Libertarian candidate receiving 1,225 votes. In 2006, Sen. Shaw defeated his Republican opponent 13,412 to 8,344 (+5,068). There was no contested general election in this district in 2008. In 2010,

Democratic African American candidate Eric Mansfield defeated his Republican opponent 21,004 to 10,062 (+10,942). The deviation for this district under the 2010 Census was (-26,593). Thus, in each of these contested Senate races from 2004 to 2010, the margin of victory for the African American Democrat was less than the population deviation for this district. (Churchill Aff. 1-7, Ex. 2)

81. In the 2004 election cycle, the African American Democratic candidate, Larry Shaw, raised $19,800 and spent $15,437. His Republican opponent raised $1,311 and spent $422. The Libertarian candidate did not file campaign reports. In 2006, Shaw raised $39,258 and spent $42,123. His Republican opponent raised and spent $26,151 and spent $26,075. In 2010, African American candidate Eric Mansfield raised $178,878 and spent $176,548. His Republican opponent raised $40,559 and spent $49,777. (Churchill Aff. 911 1-7, Ex. 2)

2003 Senate District 28: Guilford County

82. Guilford County is a covered county under § 5 of the VRA. The 2003 Senate District 28 was located in Guilford County. There was no evidence in the legislative record disputing the conclusions by Dr. Block and Dr. Brunell that racially polarized voting is present in Guilford County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14, 21, 22; Def. Desg. p. 34, f. and g.)

83. In all versions of Senate District 28 in the previous or alternative plans, which plaintiffs describe as legal, the non-Hispanic white voting age population is less than 50%: 2003 Senate 28 (42.32%); SCSJ Senate 28 (36.94%); F&L Senate 28 (40.65%); LBC Senate 28 (41.91%). The evidence shows that the 2003 version of Senate District 28 was not "less than

majority-minority." (Pl. Mem. 65; Second Frey Aff. 12-13, Exs. 34, 36-38) Nor was this district a majority-white crossover district.

84. AFRAM recommended that Senate District 28 be established with a majority-TBVAP district (51.77%). (First Frey Aff. 9[ 24, Ex. 10) This version of Senate 28 was the only version presented by any of the plaintiffs or any other party during the public hearing process.

85. In the 2003 version of Senate District 28, African Americans constituted 73.55% of all registered Democrats. Super-majorities of African Americans in Democratic registration are also found in the SCSI Senate 28 (75.49%); the F&L Senate 28 (73.62%), and the LBC Senate 28 (73.22%). (Second Frey Aff. IN 16-17, Exs. 44, 46-48) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

86. In the 2003 version of Senate 28, African Americans were a majority of the registered voters (50.16%). This is also true for the SCSJ Senate 18 (54.11%), the F&L Senate 28 (50.25%), and the LBC Senate 28 (50.26%). (Second Frey Aff. 59116-17, Exs. 44, 46-48)

87. All versions of the 2011 alternative House plans recommended that two majority-TBVAP districts be created in Guilford County: SCSJ House 58 (53.47%) and House 60 (54.41%); F&L House 58 (53.47%) and House 60 (54.47%); LBC House 58 (54.00%) and House 60 (50.43%). (First Frey Aff. ¶ 24, Ex. 11) Plaintiffs do not explain why a majority-TBVAP Senate District is unacceptable but two majority-TBVAP House Districts are acceptable.

88. There were no contested general elections for this district from 2004 through 2008. In the 2010 General Election, African American candidate Gladys Robinson defeated her Republican opponent 21,496 to 17,383 (+4,113). An unaffiliated candidate also received 6,054 votes in the 2010 General Election. The total number of votes received in 2010 by Sen. Robinson's Republican and unaffiliated opponents (23,427) exceeded the total votes received by Sen. Robinson. Under the 2010 Census, this district was underpopulated by (-13,673). Thus, the margin of victory for Sen. Robinson, when compared only to her Republican opponent, was less than the total deviation for this district. (Churchill Aff. ¶1[ 1-7, Ex. 2)

89. In the 2010 cycle, Sen. Robinson raised $69,748 and spent $60,889. Her Republican opponent raised $59,487 and spent $57,679. Her unaffiliated opponent raised $26,417 and spent $24,408. (Churchill Aff. 919[ 1-7, Ex. 2)

2003 Senate District 38: Mecklenburg County

90. The 2003 Senate District 38 is located in Mecklenburg County. There was no evidence in the legislative record disputing the conclusions by Dr. Block and Dr. Brunell that racially polarized voting is present in Mecklenburg County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14, 21; Def. Desg. p. 36, *f.* and g.) In all versions of Senate District 38 in the previous or alternative plans, which plaintiffs describe as legal, the non-Hispanic white population is less than 50%: 2003 Senate 38 (36.64%); SCSJ Senate 38 (30.22%); F&L Senate 38 (34.55%); LBC Senate 38 (34.55%). The evidence shows that the 2003 version of Senate District 38 was not "less than majority-minority." (Pl. Mem. 65; Second Frey Aff. Ti[ 12-13, Exs. 34, 36-38)

Nor was this district a majority-white crossover district.

91. The AFRAM version of Senate 38 recommended that this district be created with a majority-TBVAP (51.68%). AFRAM also recommended a second majority-TBYAP Senate district for Mecklenburg County: District 40 (52.06%). (First Frey Aff. ¶¶ 24, Ex. 11) Plaintiffs have not explained why the two SCSJ-AFRAM majority-TB \TAP districts are legal while enacted Senate District 38 is illegal.

92. In the 2003 version of Senate District 38, African Americans constituted a super-majority of registered Democrats (63.25%). The same is true for SCSJ Senate 38 (76.63%), the F&L Senate 38 (73.89%) and the LBC Senate 38 (73.89%). (Second Frey Aff. 911 16-17, Exs. 44, 46-48) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

93. African Americans are a majority of the registered voters in the 2003 Senate 38 (50.33%), the SCSI Senate 38 (56.22%), the F&L Senate (51.44%), and the LBC Senate 38 (51.44%). (Second Frey Aff. IN 16-17, Exs. 44, 46-48)

94. All alternative 2011 House plans recommended that majority-TBVAP House districts be created in Mecklenburg County: SCSI' House 101 (57.28%) and House 107 (56.43%); F&L House 101 (52.41%); LBC House 101 (50.25%). (First Frey Aff. 24, Ex. 11)

95. There were no contested general elections in this district in 2004 or 2006. In 2008, the Democratic African American candidate Charles Dannelly defeated his Republican opponent 67,755 to 22,056 (+45,699). A Libertarian candidate also received 2,588

votes. In 2010, Sen. Dannelly defeated his Republican opponent 33,692 to 15,369 (+18,323). The population deviation for this district under the 2010 Census was +47,572 (+24.9%). The amount of population deviation for this district exceeded the margin of victory for the African American Democrat in both 2008 and 2010. (Churchill Aff. ¶¶ 1-7, Ex. 2)

96. In 2008, Sen. Dannelly raised $24,399 and spent $30,564. Neither of his opponents filed campaign disclosure reports. In 2010, Sen. Dannelly raised $24,179 and spent $28,791. His Republican opponent raised $260 and spent $251 (Churchill Aff. 1-7, Ex. 2)

97. At the beginning of the 2011 session, Sen. Dannelly had served nine terms in the State Senate. (Churchill Aff. 18, Ex. 4)

2003 Senate District 40: Mecklenburg County

98. The 2003 Senate District 40 was located in Mecklenburg County. There was no evidence in the legislative record disputing the conclusions by Dr. Block and Dr. Brunell that racially polarized voting is present in Mecklenburg County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14, 21; Def. Desg. p. 36, f. and g.) In all previous or alternative versions of Senate District 40, which plaintiffs describe as legal, the non-Hispanic white population is less than 50%: 2003 Senate 40 (48.87%); SCSJ Senate 40 (26.09%); F&L Senate 40 (36.45%); and LBC Senate 40 (36.45%). The evidence shows that the 2003 version of Senate District 40 was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶¶ 12-13, Exs. 34, 36-38) Nor was this district a majority-white crossover district.

99. AFRAM recommended that Senate District 40 be created with a TBVAP of 52.06%, as compared to enacted 2011 Senate District 40, which establishes this district with a slightly lower TBVAP (51.84%). Thus, AFRAM recommended that this district be established with a TBVAP in excess of that found in the enacted 2011 District 40. (First Frey Aff. 24, Ex. 10) Plaintiffs have produced no evidence explaining why the enacted 2011 Senate District 40 is "packed" or how the General Assembly allegedly "maximized" the TBVAP for their district, given that SCSJ District 40 contains a higher TBVAP than the enacted versions.

100. In all previous or alternative versions of Senate District 40 in the alternative plans, African Americans constitute a super-majority of registered Democrats: 2003 Senate 40 (63.32%); SCSJ Senate 40 (75.11%); F&L Senate 40 (70.62%); and LBC Senate 40 (70.62%). (Second Frey Aff. p. 6, Exs. 44, 46-48) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

101. In the 2003 version of Senate District 40, African Americans represented only 37.08% of the registered voters. However, in all 2011 alternative versions of Senate District 40, African Americans represent a majority of registered voters: (SCSJ Senate 40 — 57.85%), or a near majority of registered voters (F&L District 40 — 49.10%; LBC District 40 — 49.10%). (Second Frey Aff. ¶¶ 16-17, Exs 44, 46-48)

102. In each of the 2011 alternatives, whites represent a minority of registered voters: SCSJ District 40 (32.23%); F&L Senate 40: (40.58%); LBC District 40: (40.58%). (Second Frey Aff. ¶¶ 16-17, Exs. 44, 46-48)

103. All alternative 2011 House plans recommended that majority-TBVAP House districts be created in Mecklenburg County: SCSJ House 101 (57.28%) and House 107 (56.43%); F&L House 101 (52.41%); LBC House 101 (50.25%). (First Frey Aff. ¶ 24, Ex. 11)

104. In 2004, African American Democratic candidate Malcolm Graham defeated his Republican opponent 42,096 to 30,633 (+11,463). In 2006, Sen. Graham defeated his Republican opponent 21,247 to 13,314 (+7,933). In 2008, Sen. Graham defeated his Republican opponent 66,307 to 32,711 (+33,596). In 2010, Sen. Graham defeated his Republican opponent 32,168 to 23,145 (+9,023). The population deviation for this district under the 2010 Census is 54,523 (+28.6%). Thus, Sen. Graham's margin of victory for the 2004, 2006, 2008 and 2010 general elections was less than the total deviation for this district. (Churchill Aff. ¶¶ 1-7, Ex. 2)

105. In the 2004 cycle, Sen. Graham raised $145,170 and spent $123,330. His Republican opponent raised $15,382 and spent $15,382. In 2006, Sen. Graham raised $52,825 and spent $35,536. His Republican opponent did not file campaign disclosure reports. In 2008, Sen. Graham raised $40,075 and spent $46,841. His Republican opponent raised nothing. In 2010, Sen. Graham raised $55,750 and spent $38,583. His Republican opponent outraised Sen. Graham ($70,744), and spent more funds ($69,199). Of the four elections won by Sen. Graham, his Republican opponent in the 2010 general election received the highest percentage of the vote (41.84%) as compared to all Republican challengers from 2004 to 2010. (Churchill Aff. ¶¶-7, Ex. 2)

106. At the time of the 2011 session, Sen. Graham had been elected to four terms in the state Senate. (Churchill Aff. ¶ 8, Ex. 4)

2009 House District 12: Craven and Lenoir Counties

107. The 2009 House District 12 was located in Craven and Lenoir Counties. There is no evidence in the legislative record disputing the conclusions by Dr. Block and Dr. Brunel" that racially polarized voting is present in these counties. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14; Def. Desg. p. 42, f. and g.) In the previous and alternative versions of House District 12, which plaintiffs describe as legal, the non-Hispanic white population is less than 50%: 2009 House 12 (46.23%); SCSI House 12 (47.12%); F&L House 12 (46.14%); and LBC House 12 (45.58). The evidence shows that the 2009 version of House District 12 was not "less than majority-minority." (Pl. Mem. 65; Second Frey Aff. ¶¶ 14-15, Exs. 39, 41) Nor was the 2009 version a majority-white crossover district.

108. In the 2009 version of House District 12, African Americans constituted a super-majority of registered Democrats (68.36%). The same is true for SCSJ House District 12 (66.82%), F&L House District 12 (65.26%), and LBC House District 12 (66.59%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53) In comparison, the statewide percentage of Democrats who are African American is 41.38%.

109. Whites area slight majority of the registered voters in 2009 House District 12 (51.01%), enacted 2011 House District 12 (51.47%), SCSJ House District 12 (51.37%), F&L House District 12 (51.64%), and LBC House District 12 (52.14%). The percentage of "registered whites" includes Hispanics. (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

110. The 2009 version of House District 12 contained portions of Craven and Lenoir Counties. It was similar in construction to 2003 House District 18, which was found to violate the *Stephenson* criteria. Because the 2003 version of House District 18 did not have a TB VAP in excess of 50%, it could not be justified under § 2 of the VRA and therefore could not support any departure from the WCP. *Strickland,* 556 U.S. at 17-20. By raising the TBVAP of 2011 District 12 to 50.60%, the General Assembly precluded any lawsuits challenging the 2011 version as being in violation of the *Stephenson* or *Strickland* criteria. In contrast, all three alternative 2011 versions of House District 12 are subject to the same legal challenge that led to the ruling that the 2003 version of House District 18 violated *Stephenson* because their TBVAP is under 50%. (First Frey Aff. 9[ 24, Ex. 11)

111. The 2009 version of House District 12 included portions of Carteret and Lenoir Counties. The enacted 2011 version of House District 12 includes portions of Craven, Lenoir, and Greene Counties. All three counties are covered by § 5 of the VRA. The enacted 2011 version of District 12 gives African American voters in Greene County their first equal opportunity to vote for a preferred candidate of choice. There are no past elections results for a VRA House district that includes Greene County.

112. In 2004, African American Democrat William Wainwright defeated his Republican opponent 13,573 to 7,473 (+6,100). In 2006, Rep. Wainwright defeated his Republican opponent 7,941 to 4,040 (+3,901). In 2008, Rep. Wainwright defeated his Republican opponent 17,659 to 7,882 (+9,777). In 2010, Rep. Wainwright defeated his Republican opponent 9,390 to 6,206 (+3,184). The population

deviation in this district under the 2010 Census was (-15,862). Thus, in all general elections for 2004, 2006, 2008 and 2010, Rep. Wainwright's margin of victory was less than the population deviation for this district. (Churchill Aff. ¶¶ 1-7, Ex. 3)

113. In 2004, Rep. Wainwright raised $76,225 and spent $70,171. His Republican opponent raised $5,859 and spent $10,629. In 2006, Rep. Wainwright raised $134,917 and spent $119,798. His Republican opponent raised $19,460 and spent $19,144. In 2008, Rep. Wainwright raised $155,271 and spent $97,125. His Republican opponent raised $4,884 and spent $4,755. In 2010, Rep. Wainwright raised $223,051 and spent $153,528. His Republican opponent raised $11,252 and spent $8,525. (Churchill Aft ¶¶ 1-7, Ex. 3)

114. At the beginning of the 2011 session, Rep. Wainwright had served eleven terms in the state House. (Churchill Aff. ¶ 8, Ex. 5)

2009 House District 21: Sampson and Wayne Counties

115. The 2009 House District 21 was located in Sampson and Wayne Counties, There is no evidence in the legislative record disputing Dr. Block's and Dr. Brunell's conclusions that racially polarized voting exists in these counties. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14; Def. Desg. p. 44, f. and g.) In the previous and alternative versions of House District 21, the non-Hispanic white population is less than 50%: 2009 House 21 (40.31%); SCSJ House 21 (40.62%); F&L House 21 (42.31%); and LBC House 21 (40.25%). The evidence shows that the 2009 version of House District 12 was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶¶ 14-15, Exs. 39, 41-43)

Nor was this district a majority-white crossover district.

116. In the 2009 version of House District 21, African Americans constituted a super-majority of registered Democrats (70.55%). The same is true for SCSJ House District 21 (69.08%), F&L House District 21 (70.58%), and LBC House District 21 (69.81%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

117. In the 2009 version of House District 21, African Americans were a majority of the registered voters (50.39%). The same is true for the F&L version of House District 21 (50.91%). African Americans are nearly a majority of registered voters in SCSJ House District 21 (49.44%) as well as LBC House District 21 (49.45%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

118. In all versions of House District 21, including the previous and alternatives plans, which plaintiffs describe as legal, whites constitute a minority of the registered voters: 2009 House 21 (43.97%): SCSJ House 21 (45.18%); F&L House 21 (44.03%) and LBC 21 (45.13%). (Second Frey Aff. ¶ 14, Exs. 39, 41-43)

119. The 2003 version of District 21 included portions of Wayne and Sampson Counties. It was comparable to the 2003 version of House District 18, which was found to violate the *Stephenson* criteria because it did not have a TBVAP in excess of 50%. Thus, the 2009 version of House District 21 could not be justified under § 2 of the VRA and could not support a departure from the WCP, By raising the TBVAP for District 21 to 51.90%, the General Assembly precluded any potential challenges to the 2011 version as being

in violation of the *Stephenson* or *Strickland* criteria. In contrast, all three 2011 alternative versions of House District 21 are subject to the same legal challenges that led to the ruling that the 2003 version of House District 18 violated *Stephenson* because their TBVAP is under 50%. (First Frey Aff.¶ 24, Ex. 11)

120. The 2009 version of House District 21 included portions of Wayne and Sampson Counties. The enacted 2011 version of District 21 includes portions of Wayne, Sampson and Bladen Counties. All three counties are covered under § 5 of the VRA. The enacted 2011 version of House District 21 gives African American voters in Bladen County their first equal opportunity to vote for a preferred candidate of choice. There are no past election results for a 50% or a 40% plus TBVAP House District that includes Bladen County.

121. From 2004 through 2008, there were no contested general elections in House District 21. In 2010, African American Democrat Larry Bell defeated his Republican opponent 11,678 to 6,126 (+5,552). The population deviation for this district under the 2010 Census was (-9,837). Rep. Bell's margin of victory in the 2010 election was less than the population deviation for this district. (Churchill Aff. ¶¶ 1-7, Ex. 3)

122. In this 2010 election cycle, Rep. Bell raised $23,671 and spent $27,906. His Republican opponent raised and spent $1,732. (Churchill Aff. ¶¶ 1-7, Ex. 3)

123. At the beginning of the 2011 session, Rep. Bell had been elected to six terms in the State House. (Churchill Aff. ¶ 8, Ex. 5)

2009 House District 29: Durham County

124. The 2009 District 29 was located in Durham County. There is no evidence in the legislative record disputing the conclusions of Dr. Block and Dr. Brunel" that racially polarized voting is present in Durham. County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-16; Def. Desg. p. 48, 1. and g.) In all versions of House District 29 in the previous and alternative plans, which plaintiffs describe as legal, the non-Hispanic white population is less than 50%: 2009 House 29 (46.05%); SCSJ House 21 (45.55%); F&L House 21 (41.70%); and LBC House 21 (37.83%). The evidence shows the 2003 version of House District 12 was not "less than majority-minority." (Pl. Mem. 91 65; Second Frey Aff. ¶¶ 14-15, Exs. 39, 41-43) Nor was this district a majority-white crossover district.

125. In the 2009 version of House District 29, African Americans constituted 68.20% of all registered Democrats. In the AFRAM House District 29, African Americans constituted 55.76% of the registered Democrats. In the F&L House District 29, African Americans constituted 60.06% of the registered Democrats. In the LBC House District 29, African Americans constituted 61.97% of the registered Democrats. (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-55) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

126. White voters are a minority among registered voters in F&L House 29 (47.90%) and LBC House 29 (44.20%). African Americans are a plurality of registered voters under the LBC District 29 (45.93%). (Second Frey Aff. ¶ 19, Exs. 52-53)

127. The SCSJ House Plan recommended the creation of a majority-TBVAP district located in Durham County: District 31 (51.69%). (First Frey Aff.¶ 24, Ex. 11)

128. In 2008, the African American candidate, Larry Hall, defeated a Libertarian in the general election 31,524 to 3,219 (+28,305). Rep. Hall had no Republican opponent in 2008. There were no contested general elections in this district in 2004, 2006, or 2010. (Churchill Aff. ¶¶ 1-7, Ex. 3)

129. In the 2008 general election, Rep, Hall raised $29,595 and spent $22,931. The Libertarian candidate did not file any campaign disclosure reports. (Churchill Aff. ¶¶ 1-7, Ex. 3)

130. At the beginning of the 2011 session, Rep. Hall had been elected to three terms in the state House. (Churchill Aff. ¶¶ 8, Ex. 5)

2009 House District 31: Durham County

131. The 2009 House District 31 was located in Durham County. There is no evidence in the legislative record disputing the conclusions of Dr. Block and Dr. Brunell that racially polarized voting is present in Durham County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-16; Def. Desg. p. 48, f. and g.) In all versions of House District 31 in the previous and alternative plans, which plaintiffs describe as legal, the non-Hispanic white population is less than a majority: 2009 House 31 (35.47%); SCSJ House 31 (30.13%); F&L House 31 (35.73%); and LBC House 31 (34.97%). The evidence shows the 2003 version of House District 31 was not "less than majority-minority," (Pl. Mem. ¶ 65; Second Frey Aff. ¶¶ 14-15, Exs. 39, 41-43). Nor was this district a majority-white crossover district.

132. AFRAM recommended that the 2011 version of House District 31 be created with a majority of TBVAP (51.69%), only slightly lower than the TBVAP

included in the enacted 2011 House District 31 (51.81%). (First Frey Aff. ¶ 24, Ex. 11)

133. In all previous and alternative versions of House District 31, African Americans constituted a super-majority of registered Democrats: 2009 House 31 (69.65%); SCSJ House 31 (74.28%); F&L House 31 (70.49%); and LBC House 31 (70.26%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

134. In all previous and alternative versions of House District 31, African Americans constituted a majority of the registered voters: 2009 House 31 (52.13%); SCS.1 House 31 (58.13%); F&L House 31 (52.86%); and LBC House (52.70%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

135. Plaintiffs have offered no evidence explaining why a majority-TBVAP District 31 was needed in Durham (SCSJ Plan) or why a majority-black registered voter district was needed in Durham (District 31 in the 2009 Plan, SCSJ Plan, F&L Plan and LBC Plan) while a second majority-TBVAP district (District 29) was unnecessary and evidence of alleged racial gerrymandering. Nor have plaintiffs produced any evidence showing why the SCSJ majority-TBVAP District 31 is legal, or why the other two proposals (F&L 31 and PHD 31) with majority black registration totals are legal, but the enacted 2011 version of House District 31 is illegal.

136. The Democratic African American candidate from this district faced opposition in the general election only in 2004 and 2010. In 2004, the African American candidate, H.M. ("Mickey") Michaux defeated a Libertarian candidate 23,313 to 3,802

(+19,511). In 2010, Rep. Michaux defeated a Republican candidate 18,801 to 6,102 (+12,699). The population deviation for this district under the 2010 Census was +11,812, or only 887 persons fewer than Rep. Michaux's margin of victory in 2010. (Churchill Aff. ¶¶ 1-7, Ex. 3)

137. In the 2004 election cycle, Rep. Michaux raised $5,500 and spent $5,940. His Libertarian opponent did not file campaign finance reports. In 2010, Rep. Michaux raised $34,600 and spent $10,564. His Republican opponent raised $1,828 and spent $1,798. (Churchill Aff. ¶¶ 1-7, Ex. 3)

138. At the beginning of the 2011 session, Rep. Michaux had served 16.5 terms in the state House. (Churchill ¶ 8, Ex. 5)

2009 House District 48: Hoke, Robeson and Scotland Counties

139. The 2009 House District 48 was located in Hoke, Robeson, and Scotland Counties. There is no evidence in the legislative record disputing the conclusions of Dr. Block and Dr. Brunell that racially polarized voting is present in these counties. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 1-14; Def. Desg. P. 56, f. and g.) In all versions of House District 48 included in the alternative plans, which plaintiffs describe as legal, the non-Hispanic white population is less than 50%: 2009 House 48 (29.63%), SCSI (29.90%), P&L House 48 (33.68%), and LBC House 48 (34,12%). The evidence shows the 2009 version of House District 48 was not "less than majority-minority." (Pl. Mem. ¶65; Second Frey Aff. p. 5, Exs. 39, 41-43) Nor was this district a majority-white crossover district.

140. In all previous and alternative versions of District 48, African Americans constitute a super-majority of registered Democrats: 2009 House 48 (59.81%); SCSJ House 48 (58.82%); F&L House 48 (57.31%): LBC House 48 (58.72%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

141. In the 2009 version of House District 48, 50.80% of all registered voters were African American. In the 2011 alternative plans, African Americans constitute a significant plurality of all registered voters: SCSJ House 48 (49.23%); F&L House 48 (47.14%); and LBC House 48 (48.39%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

142. In all previous and alternative versions of House District 48, whites constitute a minority of the registered voters: 2009 House 48 (31.80%); SCSJ House 48 (33.93%); F&L House 48 (36.56%); and LBC House 48 (38.78%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

143. The construction of 2003 House District 48, which includes portions of Hoke, Robeson, Scotland, and Richmond Counties, is similar to 2003 House District 18, which was found to violate the *Stephenson* criteria. Because the 2009 version did not have a TBVAP in excess of 50%, it could not be justified under § 2 of the VRA and therefore could not support departure from the WCP. By raising the TBVAP of House District 48 to 51.27%, the General Assembly precluded any potential challenges to the 2011 version as being in violation of the *Stephenson* or *Strickland* criteria. All of the alternative 2011 versions of District 48 are subject to the same legal challenge that led to the ruling that the 2003 House District 18 violated

*Stephenson,* because their TBVAP is below 50%. (First Frey Aff. ¶ 24, Ex. 11)

144. The 2009 version of District 48 was located only in Hoke, Robinson, and Scotland Counties. Both the enacted 2011 version of District 48 and the LBC version include these three counties and a portion of Richmond County. There is no evidence in the legislative record disputing Dr. Brunell's conclusion that racially polarized voting is present in Richmond County. (First Rucho Aff. Ex. 10, pp. 3-7) For the first time, African American voters in Richmond County have an equal opportunity to elect a representative of their choice. There are no past election results involving a 50% plus or a 40% TBVAP House District that included Richmond County.

145. There were no contested general elections in this district in 2004, 2006, and 2008. In 2010, African American Democrat Garland Pierce defeated his Republican opponent 9,698 to 3,267 (+6,431). The population deviation for this district was (- 13,018), which exceeds Rep. Pierce's margin of victory for the 2010 general election. (Churchill Aff. ¶¶ 1-7, Ex. 3)

146. In the 2010 general election, Rep. Pierce raised $46,557 and spent $44,607. His Republican opponent raised $2,982 and spent $2,978. (Churchill Aff. ¶¶ 1-7, Ex. 3)

147. At the beginning of the 2011 session, Rep. Pierce had served four terms in the state House. (Churchill ¶ 8, Ex. 5)

2009 House District 99: Mecklenburg County

148. The 2009 House District 99 was located in Mecklenburg County. There is no evidence in the legislative record disputing the conclusions by Dr.

Block and Dr. Brunell that racially polarized voting is present in Mecklenburg County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14, 21; Def. Desg. pp. 60, 61, f. and g.) In all previous and alternative versions of House District 99, including the alternative plans which plaintiffs describe as legal, the non-Hispanic white VAP is less than 50%: 2009 House 99 (39.41%); SCSJ House 99 (37.60%); F&L House 99 (35.68%); and LBC House 99 (30.89%). The evidence shows the 2003 version of House District 99 was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. E ¶¶ 14-15, Exs. 39, 41-43) Nor was this district a majority-white crossover district.

149. In all previous and alternative versions of House District 99, African Americans constitute a super-majority of registered Democrats: 2009 House 99 (67.85%); SCSJ House 99 (68.17%), F&L House 99 (70.38%); and LBC House 99 (75.37%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

150. In LBC House District 99, African Americans are a majority of registered voters (56.73%).. In the other versions of House District 99, African Americans are a plurality of the registered voters: 2009 House 99 (45.20%), SCSJ House 99 (46.27%); and F&L House 99 (48.79%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

151. In all previous and alternative versions of House District 99, whites are a minority of the registered voters: 2009 House 99 (43.27%); SCSJ House 99 (41.06%), F&L House 99 (38.52%); and LBC House 99 (32.47%). (Second Frey Aff. ¶¶18-19, Exs. 49, 51-53)

152. The AFRAM Plan recommended two majority-TBVAP Senate Districts for Mecklenburg County and two majority-TBVAP House Districts. (First Frey Aff. ¶ 24, Ex. 10) Both the F&L House Plan and the LBC House Plan recommended one majority-TBVAP House district for Mecklenburg County. (First Frey Aff. ¶ 24, Ex. 11) Plaintiffs have offered no evidence explaining why, these alternative majority-TBVAP House districts are, appropriate for Mecklenburg County, while those drawn by the General Assembly are alleged racial gerrymanders.

153. All four of the House Plans plaintiffs have alleged to be legal have six House districts in Mecklenburg County that are majority-minority and in which the non-Hispanic white population is less than 50%:

a. 2009 House Plan: House District 99 (39A1%); House District 100 (36.63%); House District 101 (31.58%); House District 102 (39.88%); House District 106 (48.54%); and House District 107 (37.30%). (Second Frey Aff.114, Ex. 39) Only three African Americans were elected from these six districts in 2010: Moore (District 99); Earle (District 101); and Alexander (District 107). (Churchill Aff. ¶¶ 1-7, Ex. 3)

b. SCSI House Plan: House District 99 (37.60%); House District 100 (31.59%); House District 101 (31.88%); House District 102 (37.00%); House District 106 (44.65%); and House District 107 (28.69%). (Second Frey Aff. ¶ 15, Ex. 41)

c. F&L House Plan: House District 96 (47.88%); 99 (35.68%); House District 100 (49.04%); House District 101 (34.67%); House

District 102 (41.15%); and House District 107 (45.29%). (Second Frey Aff. ¶ 15, Ex. 42)

d. LBC House Plan: House District 25 (42.44%); House District 99 (30.89%); House District 100 (37.98%); House District 101 (32.58%); House District 102 (37.29%); and House District 107 (40.30%). (Second Frey Aff.1 15, Ex. 43) Plaintiffs have failed to explain why six majority-minority districts for Mecklenburg County are legal, but five majority-TBYAP counties are illegal.

154. In 2008, the African American Democrat Nick Mackey defeated his Republican opponent 28,106 to 14,925 (+13,181). In 2010, African American candidate Rodney Moore defeated his Republican opponent 15,591 to 6,059 (+9,532). The deviation for this district under the 2010 Census was +32,850, which far exceeds the margin of victory for African American candidates in 2008 and 2010. (Churchill Aff. ¶¶ 1-7, Ex. 3)

155. In 2008, Rep. Mackey raised and spent $19,469. His Republican opponent raised $10,281.99 and spent $9,974. In 2010, Rep. Moore raised $9,155 and spent $3,213. His Republican opponent raised and spent $207. (Churchill ¶ 8, Ex. 5)

2009 House District 107: Mecklenburg County

156. The 2009 House District 107 was located in Mecklenburg County. There is no evidence in the legislative record disputing the conclusions by Dr. Block and Dr. Brunell that racially polarized voting is present in Mecklenburg County. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14, 21; Def. Desg. pp. 60, 61, f. and g.) In all versions of House District 107, which plaintiffs describe as legal, the non-Hispanic white

YAP is less than 50%: 2009 House 107 (37.30%); SCSI House 107 (28,62%); F&L House 107 (45.29%); and LBC House 107 (40.30%). The evidence shows the 2003 version of House District 107 was not "less than majority-minority." (P1. Mem. ¶ 65; Second Frey Aff. p. 5, Exs. 39, 41-43) Nor was this district a majority-white crossover district.

157. The SCSJ Plan recommended that House District 107 be created with a TBVAP of 56.43%, as compared to the enacted 2011 House District 107, which has a TBVAP of 52.52%. (First Frey Aff. ¶ 24, Ex. 11) Thus, the SCSI Plan recommended a higher TBVAP for this district than the enacted version.

158. In all previous and alternative versions of House District 107, African Americans constitute a super-majority of registered Democrats: 2009 House 107 (72.18%); SCSJ House 107 (78.78%); F&L House 107 (72.24%); and LBC House 107 (73.41%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

159. African Americans constitute a majority of the registered voters in the SCSJ House 107 (60.38%) and the LBC House 107 (50.19%). African Americans are a plurality of registered voters in the 2009 House 107 (48.72%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

160. Whites are a minority of the registered voters in all previous and alternative versions of House 107: 2009 House 107 (42.20%); SCSJ House 107 (31.13%); F&L House 107 (47.00%); and LBC 107 (42.99%). (Second Frey Aff. ¶¶ 18-19, Exs. 49, 51-53)

161. Majority-TBYAP house districts for Mecklenburg County are found in all five plans. The two

highest TB \TAP districts are found in the AFRAM House Plan: SCSI House District 101 (57.28%), and SCSI House District 107 (56.43%). (First Frey Aft% 24, Ex. 11) Both of these proposed "legal" SCSJ House Districts have a higher percentage of TBVAP than any of the enacted 2011 House Districts located in Mecklenburg County.

162. There were no contested general elections for this district in 2004 or 2006. In 2008, African American Democratic candidate Kelly Alexander defeated his Republican opponent 27,502 to 9,043 (+18,459). In 2010, Rep. Alexander defeated his Republican opponent 13,132 to 6,392 (+6,740). The population deviation for this district under the 2010 Census is (+13,998), which exceeds Rep. Alexander's margin of victory for the 2010 General Election. (Churchill Aff, ¶¶ 1-7, Ex. 3)

163. In 2008, Rep. Alexander raised $28,437 and spent $21,664. His Republican opponent did not file campaign disclosure reports. In 2010, Rep. Alexander raised $12,953 and spent $9,974. His Republican opponent raised and spent $330. (Churchill Aff. ¶¶ 1-7, Ex. 3)

164. At the beginning of the 2011 session, Rep. Alexander had served 2.5 terms in the state House. (Churchill Aff. ¶ 8, Ex. 5)

2001 First Congressional District

165. The 2001 First Congressional District includes the following counties: Bertie, Beauford, Chowan, Craven, Edgecombe, Hertford, Gates, Granville, Greene, Halifax, Jones, Lenoir, Martin, Northampton, Pasquatank, Perquimins, Pitt, Vance, Warren, Washington, Wayne, and Wilson. There is no evidence in the legislative record disputing the

conclusions of Dr. Block and Dr. Brunel that racially polarized voting continues to be present in these counties. (First Rucho Aff. Ex, 8, pp. 1-7; Ex. 10, pp. 314; Def. Desg. p. 20, f. and g.) In all versions of the First Congressional District in the previous or alternative plans, which plaintiffs describe as legal, the non-Hispanic white population is less than 50%: 2001 First Congressional (45.59%); SCSJ First Congressional (46.47%); F&L First Congressional (46.46%). The evidence shows that the 2001 version of the First Congressional District was not "less than majority-minority." (Pl. Mem. 65; Second Frey Aff. ¶ 26, Exs. 60, 62-63, 66-67) Nor was this district a majority-white crossover district.

166. In the previous and alternative versions of the First Congressional District, African Americans represent a super-majority of registered Democrats: 2001 First Congressional (66.55%); SCSJ First Congressional (65.73%); F&L First Congressional (65.66%). (Second Frey Aff. ¶ 27, Exs. 64, 66-67) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

167. In the 2001 First Congressional District, African Americans were a majority of all registered voters (50.55%). African Americans constituted a very strong plurality of all registered voters in the SCSJ First Congressional (49.32%) and in the F&L First Congressional (49.12%). (Second Frey Aff. ¶ 27, Exs. 64, 66-67)

168. In the previous and alternative versions of the First Congressional District, white voters constituted a minority of all registered voters: 2001 First Congressional (46.03%); SCSJ First Congressional (47.40%); F&L First Congressional (47.71%). (Second Frey Aff. ¶ 27, Exs. 64, 66-67)

169. In the 2004 General Election, African American Democrat G. K. Butterfield defeated his Republican opponent 137,667 to 77,508 (+60,159). Congressman Butterfield had no opposition in the 2006 General Election. In 2008, Congressman Butterfield defeated his Republican opponent 192,765 to 81,506 (+111,259). In 2010, Congressman Butterfield defeated his Republican opponent 103,294 to 70,867 (+32,427). The population deviation for this district under the 2010 Census (-97,563) exceeds Congressman Butterfield's margin of victory for 2004 and 2010. (Churchill Aff, ¶¶ 1-7, Ex. 1)

170. In the 2004 cycle, Congressman Butterfield raised $429,441 and spent $404,055. His Republican opponent raised $41,955 and spent $46,030. In 2008, Congressman Butterfield raised $792,331 and spent $703,696. His Republican opponent did not report any contributions or expenditures. In 2010, Congressman Butterfield raised $828,116 and spent $794,383. His Republican opponent raised $134,393 and spent $134,386. (Churchill Aff. ¶¶ 1-7, Ex. 1)

171. Congressman Butterfield was first elected on July 20, 2004, and has served through the present. *See* http://butterfield.house.gov/biography/.

2001 Twelfth Congressional District

172. The 2001 Twelfth Congressional District includes Guilford and Mecklenburg Counties. There is no evidence in the legislative record disputing the conclusions of Dr. Block and Dr. Brunell that racially polarized voting is present in these counties. (First Rucho Aff. Ex. 8, pp. 1-7; Ex. 10, pp. 3-14) In all versions of the Twelfth Congressional District, which plaintiffs describe as legal, the non-Hispanic white VAP was less than 50%: 2001 Twelfth Congressional

(42.40%); SCSJ Twelfth Congressional (42.38%) and F&L Twelfth Congressional (41.48%). The evidence shows the 2001 version of the Twelfth Congressional District was not "less than majority-minority." (Pl. Mem. ¶ 65; Second Frey Aff. ¶ 26, Exs. 60, 62-63) Nor was this district a majority-white crossover district.

173. In the previous and alternative versions of the Twelfth Congressional District, African Americans constitute a super-majority of registered Democrats: 2001 Twelfth Congressional (71.44%); SCSJ Twelfth Congressional (71.53%); and F&L Twelfth Congressional (69.14%). (Second Frey Aff. ¶ 27, Exs. 64, 66-67) In comparison, the statewide percentage of Democrats who are African Americans is 41.38%.

174. African Americans constitute a plurality of registered voters in the previous and alternative versions of the Twelfth Congressional District: 2001 Twelfth Congressional (48.56%); SCSI Twelfth Congressional 48.70%); and F&L Twelfth Congressional (46.54%). (Second Frey Aff. 9127, Exs. 64, 66-67)

175. Whites are a minority of all registered voters in the previous and alternative versions of the Twelfth Congressional District: 2001 Twelfth Congressional (45.26%); SCSJ Twelfth Congressional (45.17%); and F&L Twelfth Congressional (46.09%). (Second Frey Aff.1 27, Exs. 64, 66-67)

176. The African American incumbent, Mel Watt, was challenged by a Republican opponent in 2004, 2006, 2008, and 2012. In all of these elections, Congressman Watt's margin of victory exceeded the deviation for this district under the 2010 Census (+2,847). (First Frey Aff.124, Ex, 12)

177. In 2004, Congressman Watt raised $579,199 and spent $519,885. His Republican opponent raised

$108,189 and spent $104,668. In 2006, Congressman Watt raised $503,515 and spent $535,747. His Republican opponent raised $444,041 and spent $446,782. In 2008, Congressman Watt raised $680,473 and spent $646,079. His Republican opponent raised $25,306 and spent $25,584. In 2010, Congressman Watt raised $604,718 and spent $591,203. His Republican opponent raised $13,041 and spent $12,995. (Churchill Aff. ¶¶ 1-7, Ex. 1)

178. Congressman watt was first elected in1992 and has served continuously in this office through the present. See http://watt.house.gov/index.php?option=com_content&view=article&id=2578&Itemid=75.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
STATE OF NORTH CAROLINA
COUNTY OF WAKE

11 CVS 16896

11 CVS 16940
*(Consolidated)*

MARGARET DICKSON, *et al.*,

*Plaintiffs,*

v.

ROBERT RUCHO, *et al.*,

*Defendants.*

NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, *et al.*,

*Plaintiffs,*

v.

THE STATE OF NORTH CAROLINA, *et al.*,

*Defendants.*

# APPENDIX A TO THE JUDGMENT AND MEMORANDUM OF DECISION

## FINDINGS OF FACT RELEVANT TO THE ISSUE OF RACIAL POLARIZATION IN SPECIFIC LOCATIONS WHERE VOTING RIGHTS ACT DISTRICTS WERE PLACED IN THE ENACTED PLANS

*See § IV(C)(2)(c) of Judgment and Memorandum of Decision*

2011 12th Congressional District

179. Dr. Thomas Hofeller was engaged by the General Assembly for the purpose of drawing redistricting plans. (Rough Draft Trial Transcript, June 5, 2011, p. 5) ("TT Vol. II") He was not engaged to prepare expert testimony regarding the presence or absence of racially polarized voting. *(Id.* at p. 8)

180. Dr. Hofeller testified as a witness in the case of *Shaw v. Hunt,* 517 U.S. 899 (1996) *("Shaw II"),* a case that challenged the 1992 North Carolina Twelfth Congressional District as a racial gerrymander. (TT, Vol. II, p. 4) Dr. Hofeller is familiar with the decision in *Easley v. Cromartie,* 532 U.S. 234 (2000) *("Cromartie"),* a decision in which the 1997 version of the Twelfth Congressional District was upheld on the grounds that politics explained the shape and location of the districts lines as opposed to race. (TT Vol. II, p. 11)

181. The 2001 version of the Twelfth Congressional Districts was based upon the same principles that motivated the 1997 version, and is located in the same general area as the 1997 version. *(Id.* at pp. 12-14; Defs. Trial Ex. 8)

182. Dr. Hofeller took instructions for drawing maps primarily from Senator Robert Rucho, Chair of the Senate Redistricting Committee, and Representative David Lewis, Chair of the House Redistricting Committee. *(Id.* at p. 14)

183. Senator Rucho and Representative Lewis instructed Dr. Hofeller to follow the legal standard stated in *Cromartie II,* in the drawing of the 2011 Twelfth Congressional District. *(Id.* at p. 15)

184. Senator Rucho and Representative Lewis instructed Dr. Hofeller to increase the number of Democratic voters included in the 2011 Twelfth Congressional District as compared to the number of Democratic voters included in the 2001 version. By increasing the number of Democratic voters in the 2011 version of the Twelfth Congressional District, the two Chairmen intended to achieve two goals: (1) creating the 2011 Twelfth District as an even stronger Democratic district as compared to the 2001 version; and (2) by doing so, making districts that adjoin the Twelfth Congressional District more competitive for Republicans in their 2011 versions as compared to these districts as they were created in the 2001 Congressional Plan. *(Id.* at pp. 15-17)

185. The 2011 Twelfth Congressional District is located in the same six counties as the 2001 version. (TT Vol. II, p. 13; Defs. Trial Ex. 8)

186. The 1997, 2001, and 2011 versions of the Twelfth Congressional districts are based upon urban population centers located in Mecklenburg, Guilford, and Forsyth Counties. These urban areas are connected by more narrow corridors located in Cabarrus, Rowan, and Davidson Counties. *(Id.;* Rough Draft Transcript, June 4, 2013, pp. 210-211) ("TT Vol. I")

187. The principal differences between the 2001 version of the Twelfth Congressional District and the 2011 version is that the 2011 version adds more strong Democratic voters located in Mecklenburg and Guilford Counties and removes Republican voters who had formerly been assigned to the 2001 Twelfth Congressional District from the corridor counties of Cabarrus, Rowan, Davidson and other locations. (TT Vol. II, pp. 15-17; TT Vol. I, pp. 208-209).

188. Dr. Hofeller constructed the 2011 Twelfth Congressional District based upon whole Vote Tabulation Districts ("VTDs") in which President Obama received the highest voter totals during the 2008 Presidential Election (TT Vol. II, pp. 15-17). The only information on the computer screen used by Dr. Hofeller in selecting VTDs for inclusion in the Twelfth District was the percentage by which President Obama won or lost a particular VTD. *(Id.* at pp. 18-19) There was no racial data on the screen used by Dr. Hofeller to construct this district. *(Id.* at p. 24)

189. The 2011 Twelfth Congressional District includes 179 VTDs. (Second Frey Aff. Ex. 28). Only six VTDs were divided by Dr. Hofeller in forming the 2011 Twelfth Congressional District (TT Vol. II, pp. 20-24; Def. Trial Ex. 14). All of these divisions were done to equalize population among the Twelfth Congressional District and other districts or for political reasons, such as dividing a VTD in Guilford County so that incumbent Congressman Howard Coble could be assigned to the 2011 Sixth Congressional District as opposed to being placed in the 2011 Twelfth Congressional District. None of the VTDs were divided based upon racial criteria. *(Id.)*

190. Dr. Hofeller's division of VTDs in his construction of the Twelfth Congressional District did not have any impact on the political performance of the 2011 Twelfth Congressional District or its racial composition. (TT Vol. II, pp. 29-30)

191. By increasing the number of Democratic voters in the 2011 Twelfth Congressional District located in Mecklenburg and Guilford Counties, the 2011 Congressional Plan created other districts that were more competitive for Republican candidates as compared to the 2001 versions of these districts,

including the 6th Congressional District, the 8th Congressional District, the 9th Congressional District, and the 13th Congressional District. *(Id.* at pp.16-17) (Map Notebook, Rucho Lewis Congress 3 and Congress Zero Deviation)

2011 Fourth Congressional District

192. Dr. Hofeller was instructed by the redistricting chairs, Senator Rucho and Representative Lewis, to construct the 2011 Fourth Congressional District based upon the same principles stated in *Crornartie II* and used to create the 1997, 2001, and 2011 versions of the Twelfth Congressional District. (TT Vol. II, p. 32)

193. Like the 2011 Twelfth Congressional District, Dr. Hofeller was instructed to create the 2011 Fourth Congressional District as a very strong Democratic district so that 2011 Congressional districts that adjoin the 2011 Fourth Congressional District would be more competitive for Republicans as compared to the 2001 versions of these districts. *(Id.)*

194. The 2011 Fourth Congressional District is similar in construction to the 2001 Thirteenth Congressional District and the version of the Thirteenth Congressional District found in the 2011 Fair and Legal Congressional Plans. If the distance between the two most distant points of each of these three versions of the Thirteenth District are compared, the 2001 Thirteenth District has a span of 111 miles, the Fair & Legal Districts has a span of 97 miles, and the enacted 2011 Thirteenth Congressional District has a span of 88 miles. *(Id.* at p. 33; Defs. Trial Exs. 7, 9, 10) While the 2011 Fourth Congressional District is partially located in a different region than the 2001 Thirteenth or the Fair and Legal Thirteenth,

all three districts contain significant portions of Wake County. All three districts also use rural corridors to connect urban centers of population. (Map Notebook, Rucho-Lewis Congress 3, District 4; Congress Zero Deviation, District 13; Congressional Fair & Legal, District 13)

195. Like the 2011 Twelfth Congressional District, Dr. Hofeller constructed the 2011 Fourth Congressional District based upon whole VTDs in which President Obama received the highest vote totals during the 2008 Presidential Election. The only information on the computer screen used by Dr. Hotelier in selecting VTDs for inclusion in the Fourth Congressional District was the percentage by which President Obama won or lost in a particular VTD. There was no racial data on the screen used by Dr. Hofeller to construct this district. (TT Vol. II, pp. 34-35)

196. The 2011 Fourth Congressional District includes 160 VTDs. (http://www.ncleg.net/representation/Content/Plans/PlanPageDB_2011.asp?Plan=Rucho-Lewis_Congress_3&Body=Congress). Only 14 VTDs were divided by Dr. Hofeller in forming the 2011 Fourth Congressional District. All of the divisions were done to equalize population among the Fourth Congressional District and the adjoining Congressional districts, to make the district contiguous, or for political reasons. None of the VTDs were divided based upon racial data. (TT Vol. II, pp. 34-37; Def. Trial Ex. 14)

197. Dr. Hotelier's division of VTDs in his construction of the Fourth District did not have any impact on the political performance of the 2011 Fourth Congressional District or its racial composition. (TT Vol. If, p. 37)

198. By drawing the 2011 Fourth Congressional District as a very strong Democratic district, the 2011 Congressional Plan created other districts that were more competitive for Republican candidates as compared to the 2001 versions of these districts, including the Second, Seventh, Eighth, and Thirteenth Congressional Districts. (TT Vol. II, at p. 32)

2011 Senate Districts 31 and 32

199. Forsyth County is a county in which the State was held liable for a § 2 violation in *Thornburg v. Gingles,* 478 U.S. 30 (1986) (Def. Pr. Fds. No. 1)

200. A majority-minority coalition district is a district in which black voters are a plurality and are then combined with other minority voters, such as Hispanics, to form a majority coalition of two or more minority groups. *Bartlett v. Strickland,* 556 U.S. 1, 13 (2009). The United States Supreme Court has declined to address whether a majority-minority coalition district may be legally ordered as a remedy for a § 2 violation. *Id.* One circuit court has held that such districts are not proper remedies under § 2. *Nixon v. Kent County,* 76 F.3d 1381 (6th Cir. 1996). At least two circuit courts have endorsed majority-minority coalition districts as an appropriate § 2 remedy where there is insufficient black population to draw a majority-TBVAP district and the other minority group is politically cohesive with black voters. *Bridgeport Coalition for Fair Representation v. City of Bridgeport,* 26 F.3d 271, 283 (2nd Cir. 1994); *Campos v. City of Baytown, Texas,* 840 F.2d 1240, 1244 (5th Cir. 1988).

201. Forsyth County is not covered by § 5. Regardless, when reviewing a redistricting plan for predominance, § 5 requires that any inquiry by the

reviewing authority, either the United States Attorney General or the United States District Court for the District of Columbia, must encompass the statewide plan as a whole. *Georgia v. Ashcroft,* 539 U.S. 461, 479 (2003).

202. Under the 2003 Senate Plan, there was enough population in Forsyth County to draw two Senate districts wholly within that county, 2003 Senate District 31 and 2003 Senate District 32. (Map Notebook, 2003 Senate Plan)

203. Under the 2000 Census, there was not enough black population in Forsyth County to draw a majority-TBVAP district. Instead, 2003 Senate District 21 was drawn as a majority-minority coalition district. The TBVAP for the District under the 2010 Census was 42.52%. (First Frey Aff. Ex. 10) The total white VAP was 45.75%. (Second Frey Aff. Ex. 34) The total Hispanic VAP was 13.72%. *(Id.)* The total non-Hispanic white population was 42.11%. *(Id.)*

204. As was true under the 2000 Census, under the 2010 Census there is insufficient TBVAP in Forsyth County to draw a majority-TBVAP Senate district in Forsyth County. However, because of concerns regarding the State's potential liability under § 2 and § 5, Dr. Hofeller was instructed by the redistricting chairs to base the 2011 Senate District 32 on the 2003 versions of Senate District 32. (TT Vol. II, p. 46)

205. Under the criteria established in *Stephenson v. Bartlett,* 355 N.C. 354, 562 S.E.2d 377 (2002) *("Stephenson 1"),* the population deviation for the Senate District must be plus or minus 5% from the ideal number. The ideal population for a Senate District under the 2010 Census is 190,710. (First Frey

Aff. Ex. 10). Under the 2010 Census, the General Assembly could not re-enact the 2003 version of Senate District 32 because it was under populated by more than 5% (-15,440 people or -8.10%), (First Frey Aff. Ex. 10)

206. Under the 2010 Census, Forsyth County no longer had enough population to draw two Senate districts within the county, as had been done under the 2003 Senate Plan. Instead, Forsyth was grouped with Yadkin County to form a population pool sufficient to draw two Senate districts within that county group. (Map Notebook, Rucho Senate 2)

207. The first version of Senate District 32 that was released by the General Assernbly had a TBVAP of 39.32%. (http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2011.asp7Plan=Rucho_Senate_VRA_Districts&Body.Senate). Subsequently, the SCSJ plan was released. Its version of District 32 was located in a three-county and three-district group (Forsyth, Davie, Davidson). (Map Notebook, SCSJ Senate) The SCSJ District 32 had a TBVAP of 41.95%. (First Frey Aff., Ex. 10) The SCSJ District 32 was a majority-minority coalition district with a non-Hispanic white population of 43.18%. (First Frey Aff. Ex. 37)

208. The redistricting chairs were concerned that any failure to match the TBVAP % found in the SCSJ District 32 could potentially subject the state to liability under § 2 or § 5 of the VRA. Therefore, Dr. Hofeller was instructed by the Redistricting Chairs to re-draw the State's version of Senate District 32 so that it would at least equal the SCSJ version in terms of TBVAP. (TT Vol. It pp. 46-48)

209. The average district population for three Senate districts located in the SCSJ county group allowed for the creation of districts with deviations below the ideal number. In contrast, the average district population for two districts located in the state's two-county group required the creation of districts with deviations above the ideal number. *(Id.)*

210. The SCSJ Senate District 32 was created with the total population of 181,685 or 4.73% below the ideal number for a Senate district (190,710). The State could not enact the SCSJ version of Senate District 32 in the two-county combination of Forsyth and Yadkin because to do so would have pushed the total population in Senate District 31 to a level that was above the plus 5% restriction established in *Stephenson*. Thus, for the State to enact a Senate District 32 that would match the TB YAP in the SCSI version, it would have to create a district with more total population than the SCSI version and would need to do so by expanding the boundaries of the enacted Senate District 32. *(Id.)*

211. After Dr. Hofeller revised the State's version of Senate District 32 to match the TBVAP found in the SCSI version, the enacted 2011 version of Senate District 32 had a TBVAP of 42.53%, which was almost identical to the TBVAP found in the 2003 version. (First Frey Aff. Ex. 10). The population deviation for the enacted 2011 Senate District 32 was -0.79%. The population deviation for the enacted 2011 Senate District 31, the second district drawn within the Forsyth-Yadkin combination, was 4.81%. (Map Notebook, Rucho Senate 2, Actual Population Table with Deviation Listed, Senate District 31). As already explained, if the General Assembly had adopted the SCSI version of Senate District 32 (and its deviation of

-4.73%), the population that would have been forced into the enacted Senate District 31 would have caused that district to substantially exceed in population the plus 5% restriction established in *Stephenson*. (TT Vol. H, p. 47)

212. A review of the 2003 Senate Plan, the 2011 Senate Plan, the SCSI Senate Plan, and the Possible Senate Plan offered by the Legislative Black Caucus, shows that the geographic locations of Senate District 32 largely overlap in all versions of the district. (Map Notebook, Rucho Senate 2., 2003 Senate, SCSI Senate, Fair and Legal Senate, Possible Senate). Further, the percentage of TBVAP found in each version of this district runs from 38.28% (Fair and Legal and Possible Senate) to 42.53% (2011 Senate). The differences between all variations of this district are factually insignificant.

2011 House Districts 51 and 54

213. The 2011 House Districts 51 and 54 are in a three-county, three-district group consisting of Chatham, Lee, and Harnett Counties. (TT Vol. 11, p. 51; Def. Trial Ex. 20)

214. The 2011 House District 54 consists of all of Chatham County and a portion of Lee County mainly located in the City of Sanford. House District 51 consists of the remaining portions of Lee County and a portion of Harnett County. Chatham is the only whole county in this group. There are two traversals of county lines to form the three districts (all of Chatham traversing into a portion of Lee to form House District 54 and the remaining portion of Lee traversing into a part of Harnett to form House District 51). (TT Vol. 1T, 2013, pp. 51-52)

215. Under the Martin House Fair and Legal Plan, Chatham, Lee, and Harnett form a three-county group with enough population for three districts (F&L House District 56, F&L House District 52, and F&L House District 65). *(Id,;* Defs. Trial Ex. 19)

216. Under the Fair and Legal configuration for this three-county group, Chatham is wholly within House District 56 which traverses into a portion of Harnett County. Lee County is wholly within House District 53 which also traverses into Harnett. Thus, while the Fair and Legal configuration has more whole counties (two) as compared to the 2011 House Plan (one), both plans form three districts by two traversals of a county line.

217. Dr. Hofeller was instructed to draw the 2011 House District 54 as a strong Democratic district. In part, this was because the former Democratic Speaker of the House had a potential residence in Chatham County. Dr. Hofeller therefore based this district on all of Chatham County and the location of the highest concentration of Democratic voters in Lee County. (TT Vol. II, 2013, p.54)

218. There are only five VTDs in Lee County. The City of Sanford is located in at least four of these five VTDs. The City of Sanford is the largest population center in Lee County and it is impossible to divide Lee County into different House districts without dividing VTDs. (*Id.* at p. 56; Defs. Trial Ex. 4, Pl. trial Notebook, Ex. 7)

219. Dr. Hoefeller was instructed by Republicans who live in this county group regarding the location of Democratic voters in the City of Sanford. Dr. Hoefeller drew House District 54 into Sanford based upon these instructions. He largely followed

roads or streets in dividing the City of Sanford and placing into District 54 those areas of the City in which Democratic voters reside, as instructed by local Republicans. (TT Vol. II, pp. 57-58)

220. Dr. Hoefeller did not reference any racial data when he constructed House District 54. (Id. at p. 58)

221. The TBVAP for the 2011 House District 54 is 17.98%. (Map Notebook, Lewis-Dollar-Dockham 4, Table showing Voting Age Popualtion by Race).

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
STATE OF NORTH CAROLINA
COUNTY OF WAKE

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11 CVS 16896

2160

11 CVS 16940

*(Consolidated)*

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MARGARET DICKSON, *et al.*,

*Plaintiffs,*

v.

ROBERT RUCHO, *et al.*,

*Defendants.*

---

NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, *et al.*,

*Plaintiffs,*

v.

THE STATE OF NORTH CAROLINA, *et al.*,

*Defendants.*

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Amended Certificate of Service

*Amended Certificate of Service*

The undersigned certifies that the foregoing Judgment and Memorandum of Decision, as well as Appendices A and B, were served upon all parties by e-mail on July 8, 2013 and by first class mail on the date set out below, addressed to the following:

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This the 17 day of July, 2013.

/s/ Jeni Stewart

**EXHIBIT G**

Deposition of Erika Churchill (excerpted with exhibit 55)

("Churchill Deposition")

(filed in *Dickson v. Rucho)*

[1] STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

---

11 CVS 16896
11 CVS 16940

---

MARGARET DICKSON, *et al.*,
*Plaintiffs*,

vs.

ROBERT RUCHO, in his official capacity only as the Chairman of the North Carolina Senate Redistricting Committee, *et al.*,
*Defendants*.

---

NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, *et al.*,
*Plaintiffs*,

vs.

STATE OF NORTH CAROLINA, *et al.*,
*Defendants*.

---

DEPOSITION OF ERIKA CHURCHILL

9:39 A.M.
TUESDAY, MARCH 20, 2012

POYNER SPRUILL
301 FAYETTEVILLE STREET
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By: Denise Myers Byrd, CSR 8340, RPR

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* * *

[73] couldn't directly talk to our bill drafting software, so we had a program in the middle that allowed them to communicate with each other.

In updating that program, a line of code was left out, and it was that line of code that caused not full communication.

Again, everything that was communicated was communicated accurately, there were just some things that got dropped out.

Q. And as a result of this error, the legislature reconvened and reenacted or enacted new – well, did they reenact the old plans or did they enact new plans?

MR. PETERS: Objection.

BY MR. SPEAS:

Q. Do you understand the question?

A. The General Assembly came back in November early that month, I do not remember the date, and reenacted the legislation that depicted the map that was always intended in the July session.

Q. Okay.

(WHEREUPON, Exhibit 55 was marked for identification.)

BY MR. SPEAS

Q. Ms. Churchill, I have handed you an exhibit marked [74] 55, and I would represent to you that it includes joint statements made by Senator Rucho and Representative Lewis as they appear on the legislature's website.

Would you examine those documents and tell me whether you believe that to be correct.

A. I honestly have no basis of knowledge. I am going
to assume if you pulled them from our website they are the documents from our website.

Q. And they are joint statements – appear to be joint
statements from Senator Rucho and Representative Lewis; is that correct?

A. They all appear to be titled that way.

Q. Did you play any part in the drafting of those – of any of those statements?

A. No, sir.

Q. Did any member of your staff play any role in the drafting of those statements?

A. Not to my knowledge, no, sir.

Q. Did you at any point review those statements or any of them?

A. No, sir.

Q. At any point to your knowledge did any member of your staff review these statements, these joint statements?

[75] A. When you say review, I am going to assume you mean prior to its release to the public for any type of input.

Q. That's correct.

A. No, not to the best of my knowledge.

Q. Do you know who drafted these statements?

A. I would assume Senator Rucho and Representative Lewis.

Q. Have you – since they were published, have you ever reviewed them?

A. I've read them as they were being released, but not since then, no, sir.

Q. Would you turn to the second page of the first statement, the June 17th statement issued by Senator Rucho and Representative Lewis, and at the top of that page there, appears a paragraph that begins "The Chairs believe there is a strong basis in the record to conclude that North Carolina remains obligated by federal and state law to create majority and minority districts.

"Our conclusion is based upon the history surrounding the creation of VRA districts in the state of North Carolina.

"Both as ordered by the federal courts and as adopted by the legislature from '86 through the [76] present, our conclusion is also supported by evidence

and testimony submitted to the Joint Redistricting Committee or received at public hearings."

Did I read that correctly?

A. Paraphrased, yes, sir.

Q. Did you play any role in the development of the strong basis in the record to use the phrase used there of evidence?

A. I honestly don't know because I don't know who wrote this. I'm assuming it was the chairs, but I don't know what they used as a basis. I do not want to speak for them.

Q. All right. Did you play any role in the preparation of the record that the legislators are referring here to support the VRA districts?

A. I'm not sure what you mean by record.

Q. Were you ever assigned responsibilities as a staff member to put together information supporting the creation of VRA districts?

A. Not that I know of, no.

Q. Were any member or members of your staff assigned that responsibility to your knowledge?

A. No, sir.

Q. Do you know who would have put together this strong [77] record that they were referring to in this document?

A. No, sir.

Q. I am going to show you another which we will mark as Exhibit 56.

(WHEREUPON, Exhibit 56 was marked for identification.)

BY MR. SPEAS:

Q. The court reporter has placed a document in front
of you marked Exhibit 56, and I would represent to you that this was taken from the General Assembly's website.

A. Okay.

Q. And have you ever seen this document before?

A. It appears to be a timeline that was created at some point and just has been continuously updated with regards to redistricting by the General Assembly in terms of legislative action.

Q. And it covers a period 1991 through 1999; is that correct?

A. It appears to, yes, sir.

Q. Did you play any role in the preparation of that document?

A. I'm going to be honest with you and say I don't know because I don't know when it was prepared. I

* * *

NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27603

Joint Statement by Senator Bob Rucho, Chair of the Senate Redistricting Committee, and Representative David Lewis, Chair of the House Redistricting Committee, released on June 17, 2011

The Chairs of the Joint House and Senate Redistricting Committee are committed to proposing fair and legal districts for all citizens of North Carolina, including our minority communities.

Therefore, on June 23, 2011, the Joint House and Senate Redistricting Committee will hold a public hearing on Voting Rights Act districts and four other districts proposed by the Chairs for the 2011 State Senate and State House redistricting plans.

Locations for this public hearing include the North Carolina Museum of History in Wake County, Fayetteville Technical Community College, Guilford Technical Community College, UNC Charlotte, UNC Wilmington, East Carolina University, and Roanoke-Chowan Community College. The public hearing will run from 3:00 PM to 9:00 PM. Individuals interested in speaking should call the General Assembly or consult the General Assembly's web site for sign-up procedures.

We have decided to focus this public hearing on proposed legislative Voting Rights Act ("VRA") districts and four other proposed districts. We have chosen this option because of the importance of minority voting rights. Moreover, the decisions by the North Carolina Supreme Court in *Stephenson v. Bartlett*, 355 N.C. 354 (2002) (*"Stephenson I"*), and *Stephenson v. Bartlett*, 357 N.C. 301 (2003) (*"Stephenson II"*), require that VRA districts be created before other legislative districts.

The Chairs believe that there is a strong basis in the record to conclude that North Carolina remains obligated by federal and state law to create majority African American districts. Our conclusion is based upon the history surrounding the creation of VRA districts in the State of North Carolina, both as ordered by the federal courts and as adopted by the Legislature, from 1986 through the present. Our conclusion is also supported by evidence and testimony submitted to the Joint Redistricting Committee or received at public hearings.

In creating new majority African American districts, we are obligated to follow the decisions in *Stephenson I* and *II* as well as the decisions by the North Carolina Supreme Court and the United States Supreme Court in *Strickland v. Bartlett*, 361 N.C. 491 (2007), affirmed, *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009). Under the *Strickland* decisions, districts created to comply with section 2 of the Voting Rights Act, must be created with a "Black Voting Age Population" ("BVAP"), as reported by the Census, at the level of at least 50% plus one.[1] Thus, in constructing VRA majority black districts, the Chairs recommend that, where possible, these districts be drawn at a level equal to at least 50% plus one "BVAP." To determine the percentage of "BVAP" in proposed districts, we have used a more specific census category listed in our reports as "Total Black Voting Age Population" ("TBVAP"). This category includes any person 18 years old or older, who self identifies as wholly or partially "any part black." It is our understanding that this Census category is preferred by the United States Department of Justice and the United States Supreme Court. *See Georgia v, Ashcroft*, 539 U.S. 461, 473 n. 1 (2003).

During our proceedings we have asked for advice on the number, shape, and locations of VRA districts that should be included in the Senate and House plans. During our public hearings, members of the public requested that current majority African American districts be retained, where possible, and that additional majority black districts be created, where possible. Based upon this testimony, along

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[1] The North Carolina Supreme Court described the required majority as *Citizen* Black Voting Age Population ("CBVAP"). The 2010 Census did not report on this category of information.

with input we have received from at least one black incumbent House member, the Chairs recommend, where possible, that each plan include a sufficient number of majority African American districts to provide North Carolina's African American citizens with a substantially proportional and equal opportunity to elect their preferred candidates of choice.

Based upon the statewide TBVAP figures, proportionality for the African American citizens in North Carolina means the creation of 24 majority African American House districts and 10 majority African American Senate districts. Based upon census figures for both 2000 and 2010, the 2003 plans do not satisfy this standard. The 2003 Senate plan, used in elections from 2004 to 2010, contains zero districts in which African Americans constitute a TBVAP majority. The 2003 House plan, as amended for the 2010 General Election, contains nine districts in which African Americans constitute a TBVAP majority based upon 2000 census figures. The 2003 House plan, as amended for the 2010 General Election, contains ten districts in which African Americans constitute a TBVAP majority based upon 2010 census figures.

The Chairs note that under the benchmark 2003 plans, only eighteen African American members are currently serving in the House and only seven African Americans are currently serving in the Senate. The Chairs also note that two incumbent African American senators were defeated in the 2010 General Election. Both of these former African American incumbents (Don Davis in District 5 and Tony Foriest in District 24) were defeated by white candidates in districts with a TBVAP population below 40%.

Unlike the 2003 benchmark plans, the Chairs' proposed 2011 plans will provide substantial proportionality for North Carolina's African American citizens. The 2011 House plan, recommended by Chairman Lewis, consists of 24 majority African American House districts and two additional districts in which the TBVAP percentage exceeds 43%. Moreover, the 2011 Senate plan proposed by Chairman Rucho consists of 9 majority African American Senate districts. Chairman Rucho has been unable to identify a reasonably compact majority African American population to create a tenth majority African American district.

Increasing the number of majority African American districts will ensure non-retrogressive legislative plans. Thus, adopting plans that increase the number of majority black districts will expedite the preclearance of each plan pursuant to Section 5 of the Voting Rights Act, *See* Federal Register Vol. 76, no. 27 at 7471: Report by the United States House of Representatives, Committee on the Judiciary, 109th Congress, 2d Session, Report 109-478 at 68 72 (2006); *Beer v. United States*, 425 U.S. 130 (1976). Substantial proportionality also furthers the State's obligation to comply with Section 2 of the Voting Rights Act. *See Johnson v. DeGrandy*, 512 U.S. 997 (1994).

In creating proposed majority black districts, the Chairs have been guided by testimony and advice received from experts recommended by the Democratic legislative leadership. Based upon this information, the Chairs have rejected the possibility of any districts that would constitute the "cracking" or "packing" of any reasonably compact African American population as those terms have been defined by the United States Supreme Court.

*See Quilter v. Voinovich*, 507 U.S. 146, 153-154 (1993). Nor have the Chairs supported any district that would involve the "stacking" of a minority population. We understand the term "stacking" to mean the submergence of a less affluent, geographically compact, African American population capable of being a majority in a single member district, within a larger, more affluent majority white population.

We wish to point out several features of the proposed VRA districts upon which the Chairs invite public comment.

First, testimony during the public hearing in New Hanover County indicated that the minority community in that area of the State would support the creation of a new majority African American House district to replace the former House District 18. That district was constructed in the 2003 House plan with an African American voting age population substantially below 50% plus one. In *Strickland v. Bartlett*, both the North Carolina Supreme Court and the Supreme Court of the United States ruled that African American districts needed by the State to comply with Section 2 of the Voting Rights Act must be established with a BVAP of 50% plus one. In response to testimony during the New Hanover public hearing, the plan proposed by Chairman Lewis includes a revised black voting age majority version of District 18 that complies with the *Strickland* decisions.

The Chairs also wish to receive comments regarding the Senate and House districts to be adopted in Forsyth County. Districts in Forsyth County were found to be in violation of Section 2 of the Voting Rights Act in the decision of *Thornburg v. Gingles*, 478 U. S. 30 (1986). This decision has never

been vacated or over-ruled and is still binding on the State. Moreover, the historical and legislative records indicate that all of the elements necessary to prove a Section 2 violation in Forsyth County still remain, except as described below.

In 2003, as reported by the 2000 Census, the State created three legislative districts in Forsyth that consisted of a TBVAP in excess of 40%: Senate District 32 – 41.42%; House District 71 – 51.57%; and House District 72 – 43.40%. Pursuant to the 2010 Census, these districts have the following percentage of TBVAP population: Senate District 32 – 42.52%.; House District 71 – 51.09%; and House District 72 – 45.40%. Unfortunately, also under the 2010 Census, all three districts are under-populated for compliance with the constitutional requirement of one person one vote. Because all three districts are under-populated, all three must be adjusted to add additional total population. *See Stephenson I* and *II*. Adding additional total population has the effect of decreasing the percentage of the African American voting age population in each district.

Because House Districts 71 and 72 are both significantly under-populated, Chairman Lewis believes that it is not possible to create two majority African American House districts in Forsyth. He is concerned that it may not be possible to create one reasonably compact majority black house district in Forsyth County and another district that would keep District 72 at a TBVAP level that reasonably approaches its benchmark level. Based upon the experience in Democratic primaries for Senate District 32, there is also concern that a plurality House district in the 40% range or under may not re-elect the current African American incumbent in House District 72. Therefore, at this time, Chairman

Lewis has recommended that both House districts, which currently elect two black incumbents, be created at TBVAP levels above 43%. Thus, under the 2010 Census, proposed House District 71 has a TBVAP population of 47.31%. Proposed District 72 would be established with a TBVAP percentage of 43.33%.

Chairman Rucho believes that it is not possible to create a majority black Senate district in Forsyth. He therefore recommends that proposed Senate District 32 be created at a TBVAP percentage of 39.32%.[2] Chairman Rucho also recommends that the current white incumbent for the Forsyth Senate district not be included in the proposed Senate District 32, The white incumbent has defeated African American candidates in Democratic prima-ries in 2004 and 2010. The Senate Chair recommends this adjustment in the absence of a tenth reasonably compact majority African American senate population. If adopted by the General Assembly, proposed coalition District 32 will provide African American citizens with a more equal, and tenth opportunity, to elect a candidate of choice.

The Chairs also wish to note their attempts to consider political access and opportunities for the Native American population located in southeastern North Carolina, In recognition of those important interests, the House Chair recommends that House

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[2] Proposed Senate District 32 also contains a Hispanic population of 12.21%, thus rendering this district as a "majority minority" district. While we have not performed a cohesion analysis involving African Americans and Hispanics, we have been advised by Congressman Watt that, in his opinion, urban African American and Hispanic voters who reside in his congressional district are cohesive.

District 47 be retained as a majority Native American District.

In the 2003 Senate plan, Robeson County was combined with Hoke County to create a two county, single Senate district (Senate District 13). Chairman Rucho believes that it is not possible to create a majority Native American Senate district that complies with federal and state law. Because it is not possible to create a majority Native American Senate district, the *Stephenson I* and *II* county combination rules prevent the re-establishment of District 13 based upon a combination of Robeson and Hoke Counties. Under the 2010 Census, the combined population of Robeson and Hoke is slightly lower than the maximum negative population deviation range (minus 5%). Thus, unlike the 2003 Senate plan, Robeson County cannot be grouped with Hoke County. As a result, Robeson County has been combined with Columbus County to form a two county senate district. Under this configuration, proposed Senate District 13 will retain a significant and influential percentage of Native American citizens.

The Chairs have solicited redistricting input from North Carolina's Hispanic population. Based upon the 2010 Census, neither Chair was able to identify a reasonably compact Hispanic population that could form the basis for either a majority Hispanic House or Senate District. The Chairs would entertain any proposals for a majority Hispanic House or Senate district that complies with applicable federal and state law.

On March 24, 2011, we announced that the Chairs would recommend legislative redistricting plans that complied with the criteria established in *Stephenson I* and *II* and *Bartlett v. Strickland*. On that date, and

on other occasions, including numerous public hearings, the Chairs have solicited members of the General Assembly and the public for any information, comments and advice related to redistricting. On March 24, 2011, every member of the General Assembly received notice of the resources available to them for the preparation of proposed districts and plans. The Chairs also have taken the unprecedented step of providing additional expert staff and technology assistance to the Legislative Black Caucus, requested by the Black Caucus in order to draw their own proposed districts and plans. As of today, we have not received any proposals for specific legislative districts or proposed state wide legislative plans from the Democratic leadership or the Legislative Black Caucus

Nevertheless, the Chairs remain interested and open to other proposed configurations for majority minority districts as well as non-VRA districts. The Chairs will also consider recommendations regarding legislative districts in Forsyth County and any proposed Senate plan that includes ten majority African American districts, provided any such proposals are based upon ten reasonably compact majority African American populations.

As we stated on March 24, 2011, the Chairs continue to recommend that alternative proposals comply with the requirements of *Stephenson I* and *II* and *Bartlett v. Strickland.* We also recommend that any proposed state-wide plan contain a sufficient number of districts that will bring African American citizens as close as possible to substantial proportionality in the number of majority African American districts.

NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27603

## Statement by Sen. Bob Rucho and Rep. David Lewis Regarding Proposed VRA Districts

In anticipation of the public hearing scheduled for June 23, 2011, we want to correct several erroneous statements that have appeared in the news media regarding our proposed Voting Rights Act ("VRA") districts.

Claim 1: The proposed VRA districts plan includes an illegal "packing" strategy.

"I think they unnecessarily and probably illegally pack minority voters into districts," said Sen. Dan Blue, D-Wake. "I need to analyze them a little bit further, but my initial impression is they're engaged in packing in non-Section 5 Voting Rights Act districts." ("Blue questions legality of draft redistricting maps," SGR Today, 6/20/11)

"How. . . 'packing' may dilute minority voting strength is not difficult to conceptualize. A minority group, for example, might have sufficient numbers to constitute a majority in three districts. So apportioned, the group inevitably will elect three candidates of its choice, assuming the group is sufficiently cohesive. But if the group is packed into two districts in which it constitutes a super-majority, it will be assured only two candidates." *Voinovich v. Quitter*, 507 U.S. 146, 153-154 (1993).

Senator Dan Blue, among others, has stated that our proposed majority black districts result in illegal "packing" of black voters. There is no factual or legal basis for this argument.

The U.S. Supreme Court has defined the term "packing" to mean the intentional creation of super majority black districts designed to prevent the creation of one or more other majority black districts. *See Voinovich v Quitter*, 507 U.S. 146 (2003). We have not engaged in this practice. Senator Blue is presumably aware of the Supreme Court's definition of packing. If there is another Supreme Court case that supports Senator Blue's definition we request that he provide it to us.

Claim 2: The proposed VRA districts plan includes too many majority-minority districts.

"The new maps include 24 majority-black districts in the N.C. House and 10 in the Senate, according to an attached memo." ("North Carolina redistricting maps may hurt Republican allies William Brisson, Dewey Hill," *Fayetteville Observer,* 6/20/11)

"Any legislative district designated as a Section 2 district under the current redistricting plans, and any future plans, must satisfy either the numerical majority requirement as defined herein, or be redrawn in compliance with the Whole County Provision of the Constitution of North Carolina and with *Stephenson I* requirements." *Strickland v. Bartlett*, 649 S.E.2d 364, 376 (N.C. 2007).

Our proposed Senate plan includes only nine majority black Senate districts. We were unable to identify a tenth reasonably compact majority black population which could be used to create a tenth majority black Senate district. Senate District 32 is not a majority black district because of the absence of sufficient black population in Forsyth County. In proposed Senate District 32, blacks comprise 39.48% of the voting age population. Voting age Hispanics constitute 12.21%.

Congressman Watt has advised us that urban Hispanic populations in his Congressional district tend to vote for the same candidates favored by urban African Americans voters. Thus, our proposed version of Senate District 32 provides the black community with a tenth opportunity to elect a candidate of their choice, provided African American voters in Forsyth County can build a coalition with urban Hispanic voters.

Our proposed Senate District 13 was constructed, as was the predecessor District 13, to have a plurality Native American population (26.49%). The Native American population combines with the black population (25.92%) to establish a majority minority district. However, this district is neither majority Native American nor majority black.

Congressman Watt has advised us that black voters and Native American voters do not tend to vote for the same candidate and are not politically cohesive. The predecessor district to our proposed Senate District 13 has always elected a white candidate. Current Senate District 13 never elected a black or a Native American candidate. The failure of an African American or Native American to be elected from current Senate District 13 seems to support Congressman Watt's opinion.

There are only twenty four proposed majority black House districts in our proposed plan. Some media outlets have reported that there are twenty seven majority black House districts.

The alleged twenty-fifth district, House District 47, is a majority Native American district and replicates a similar district in the 2003 house plan. It does not count towards giving the black community a

proportional and equal opportunity to elect candidates of their choice.

Two other alleged majority black districts, House Districts 71 and 72 in Forsyth County cannot both be drawn with a black voting age population of over 50%. Neither district is therefore a majority black district.

Claim 3: The proposed VRA districts plan is solely an attempt to maintain Republicans' political power.

"Democrats charged that Republicans are trying to pack black Democrats into districts so as to make it easier for the GOP to win the remaining ones. . . 'They want to make sure they maintain their power,' said Fleming El-Amin, a local activist who sits on the Democratic committee that will review the redistricting recommendations." ("GOP well within rights on redistricting, but Garrou would be heavy loss," *Winston-Salem Journal,* 6/22/11)

The State has an obligation to comply with the Voting Rights Act. In the 2003 plans, rather than comply with the VRA, the previous Legislative leadership engaged in a redistricting technique called "cracking."

Under Supreme Court precedent, one example of "cracking" or "fragmenting" occurs when Legislative leaders remove black population from a majority black district and spread these voters into other adjoining districts that will elect a white candidate but not a black candidate. *See Voinovich v Quilter* 507 US 146, 153 (2003); *Thornburg v Gingles*, 478 U.S. 30, 46 n.11 (1986). Based upon these Supreme Court definitions, in creating the 2003 plans, the former Legislative leaders "cracked" majority black districts in two different ways.

First, in the 2003 plans, populations in several formerly majority black districts were reduced to populations levels of 39% to 49% black. This practice was rejected by the North Carolina and United States Supreme Courts in *Strickland v Bartlett*, 129 S.Ct. 1231 (2009). Where possible, majority black districts drawn to comply with the VRA must be based upon an actual majority of black voters.

Second, the Legislative leaders rejected several majority black districts in locations at which the black community had a right, under the VRA, to a majority black district.

While districts that adjoin majority black districts may become more competitive for Republican candidates because of compliance with the VRA, such competitiveness results from compliance with the VRA. This is the opposite of the prior Legislative leadership intentionally cracking majority black districts required by the VRA to ensure the re-election of white incumbents.

Claim 4: The proposed VRA districts plan dilutes the influence of minority voters.

"It is illegal to arbitrarily pack minorities into the same districts just for the sake of doing it because you dilute the minorities' voting strength in other districts." Senator Dan Blue, D-Wake ("Blue questions legality of draft redistricting maps," SGR Today, 6/20/11)

"[A] minority group must constitute a numerical majority of the voting population in the area under consideration before Section 2 of the VRA requires the creation of a legislative district to prevent the dilution of the votes of that minority group." *Strickland v. Bartlett*, 649 S.E.2d 364, 371 (N.C. 2007).

In 2003, the Legislative leadership pursued a strategy which reduced the number of majority black districts and replaced them with two types of districts.

Districts that were between 40 and 50% black were called "effective" majority districts. The Legislative leaders argued that it was not necessary to create majority black districts under the VRA because black populations over 40% were "good enough" to elect a black candidate.

In 2003, Legislative leaders also supported "influence districts." These were districts with black populations between 30% and 40%. These districts have very rarely elected black candidates, but the Legislative leaders argued that black voters would be able to "influence" the election of candidates who were "sympathetic" to their point of view.

A Supreme Court case called *Georgia v Ashcroft* 539 U.S. 461 (2000), provided some legal support for this proposition. However, in a case called *LULAC v Perry*, 548 U.S 399 (2006), the US Supreme Court clarified that "influence" districts were not required by the VRA.

Moreover, *Georgia v Ashcroft* was legislatively over-ruled in 2006 when the Congress reenacted Section 5 of the VRA. See Federal Register Vol. 76, no. 27 at 7471: Report by the United States House of Representatives, Committee on the Judiciary, Report 109-478 at 68-72.

Finally, in *Strickland v Bartlett*, 361 N.C. 491 (2007), *affirmed by Bartlett v Strickland*, 129 S.Ct. 123 (2009), the North Carolina and U.S. Supreme Courts announced that majority black districts must be drawn with an actual majority black voting age population.

Thus, the current 2003 plans violate the voting rights of black citizens in two ways. Alleged majority black districts were not drawn with a true majority of black voters. And "influence districts" were incorrectly substituted for true majority black districts. Our proposed VRA districts do not repeat these violations.

Claim 5: These districts are a done deal and will be enacted with no input from voters.

We have had an unprecedented number of public hearings. For example, in 2001 Legislative leaders held 26 public hearings including hearings in 13 counties covered by section 5 of the Voting Rights Act. In 2001, Legislative leadership did not produce proposed legislative or congressional plans until the end of the public hearing process. In 2003, we are aware of no public hearings held on proposed plans.

By way of contrast, in 2011, we have already held 36 public hearings including 24 in counties that are covered by section 5 of the Voting Rights Act. Under our current schedule we intend to hold three public hearings. The first will be on June 23 and will focus on proposed VRA districts and four other districts. On July 7, 2011, we intend to hold an additional public hearing.

We have also provided an unprecedented level of redistricting support to the Black Caucus. This included the hiring of additional staff with special redistricting expertise and technology assistance not provided to other members of the General Assembly.

Starting on March 24, 2011, we have repeatedly asked for input from the Democratic leadership and the Black Caucus on the issue of majority black districts. We understand that the Black Caucus has produced alternative maps, however, they have not

been provided to us. Further, while we have received some input from individual members regarding specific districts, to date we have received no suggestions for proposed plans from the Democratic leadership or any of several interest groups to whom we have made requests for recommendations and input.

We are more than willing to entertain specific suggestions related to our proposed plans and specific districts.

Claim 6: The proposed VRA districts plan violates principles of compactness.

"State Sen. Eric Mansfield, a Democrat, said he's disappointed by the shape of his new district. The old district is a compact, somewhat rectangular shape covering the northwest corner of Cumberland County. Mansfield said the new shape resembles a crab." ("North Carolina redistricting maps may hurt Republican allies William Brisson, Dewey Hill," *Fayetteville Observer,* 6/20/11)

This argument misstates the law. Majority black districts must be based upon reasonably compact black populations, not districts.

Congressman Butterfield's First Congressional district has been found by a federal court to be based upon a reasonably compact black population. Using Congressman Butterfield's district as an example, we believe that all of our proposed legislative districts are, based upon reasonably compact black populations.

However, we would entertain any specific suggestions from the Black Caucus or others identifying more compact majority black populations to form the core of alternative majority black

districts, provided the total districts proposed provide black voters with a substantially proportional statewide opportunity to elect candidates of their choice. Moreover, any such districts must comply with *Strickland v Bartlett*, and be drawn at a level that constitutes a true majority of black voting age population.

NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27603

Statement by Senator Bob Rucho and Representative David Lewis Regarding the Proposed 2011 Congressional Plan
July 1, 2011

From the beginning, our goal has remained the same: the development of fair and legal congressional and legislative districts. Our process has included an unprecedented number of public hearings (36) scheduled before the release of any maps. These included an unprecedented number of hearings in (24) counties covered by Section 5 of the Voting Rights Act. In another unprecedented act, we provided the Legislative Black Caucus with staff support and computer technology resulting in costs to the General Assembly in excess of $60,000. We also decided to schedule twenty-five public hearings to give the public an opportunity to comment on legislative and Congressional maps. Consistent with the guidance provided by the North Carolina Supreme Court in *Stephenson v Bartlett* 355 N.C. 354 (2002), our first public hearing was focused on our proposed VRA legislative districts. Our second public hearing, scheduled for July 7, 2011, will give the public an opportunity to comment on our proposed Congressional plan. Finally, our third public hearing,

scheduled for July 18, 2011 will solicit feedback on our proposed legislative plans.

Today we are pleased to release our proposed 2011 Congressional Plan. We believe that our proposed Congressional plan fully complies with applicable federal and state law. We also believe that a majority of North Carolinians will agree that our proposed plan will establish Congressional districts that are fair to North Carolina voters.

Unlike state legislative districts, there are very few constitutional criteria that apply to legislative districts. Some of the factors we considered include the following:

1. Use of current Congressional plan as a frame of reference.

The current Congressional plan could not be retained for several reasons. However, we used the current plan as a frame of reference for re-drawing new congressional districts. Thus, our proposed plan and the current Congressional plan (2001: Congress Zero Deviation) are similar in some respects.

2. Compliance with "one person one vote."

Based upon several decisions by the United States Supreme Court, Congressional districts must be drawn at equal population. *See Westberry v Sanders*, 376 U.S. 1 (1964); *Karcher v Daggett*, 466 U.S. 910 (1984). The ideal population for a North Carolina Congressional district under the 2010 census is 733,499. Our proposed districts meet this constitutional requirement.

Re-drawing districts with equal population necessitated significant changes in the boundary lines of the current districts. Revisions were required because six of the current Congressional districts are

significantly under-populated below the ideal number. (Districts 1, 5, 6, 8, 10, and 11). In contrast, seven districts are over-populated above the ideal number (2, 3, 4, 7, 9, 12, and 13). The population shift between our thirteen districts is largely the result of more rapid growth in the Mecklenburg/Piedmont and Research Triangle areas of the state as compared to more rural areas located in eastern and western North Carolina.

3. Compliance with the Voting Rights Act.

Our proposed plan, if adopted by the General Assembly, will need to be "precleared" under Section 5 of the Voting Rights Act. States have the option of seeking administrative preclearance by the United States Department of Justice or by filing a lawsuit seeking preclearance by the United States District Court of the District of Columbia. To obtain preclearance, we are obligated to show that the plan is not retrogressive or purposefully discriminatory. We believe that our plan accomplishes this goal.

(a) Districts Represented by Black Incumbents

Voters in the First and Twelfth Congressional Districts are represented by two African American members of Congress, Congressman G.K. Butterfield and Congressman Mel Watt. As part of our investigation into fair and legal congressional districts, we sought advice from Congressman Butterfield and Congressman Watt. We believed that we could benefit from hearing their views on how their districts should be re-drawn in light of population movement.

The State's First Congressional District was originally drawn in 1992 as a majority black district. It was established by the State to comply with

Section 2 of the Voting Rights Act. Under the decision by the United States Supreme Court in *Strickland v. Bartlett*, 129 U.S. 1231 (2009), the State is now obligated to draw majority black districts with true majority black voting age population. Under the 2010 Census, the current version of the First District does not contain a majority black voting age population.

In addition, the current First District is substantially under-populated by over 97,500 people. Thus, in order to comply with "one person one vote," over 97,500 people must be added to create a new First District.

We met with Congressman Butterfield to discuss these issues. Congressman Butterfield acknowledged that the legal deficiencies of the existing First District could be addressed through the addition of either the minority community located in Wake County or the minority community residing in Durham County. Congressman Butterfield believed that including Wake County in his district would give him the opportunity to represent the communities reflected by Shaw University and St. Augustine College. Between these two options, Congressman Butterfield advised us that he preferred the addition to his district of the minority population in Wake County, as opposed to the minority population in Durham County.

We elected to accommodate Congressman Butterfield's preference. By adding population from Wake County, we have brought the First District into compliance with "one person, one vote." Because African Americans represent a high percentage of the population added to the First District from Wake County, we have also been able to re-establish Congressman Butterfield's district as a true majority black district under the *Strickland* case.

In light of the population growth experienced by urban counties and the slower growth experienced by rural population, drawing Congressman Butterfield's district into Wake County accomplished another important goal. It is less likely that the First District will become substantially under-populated during this decade and it is more likely that the First District can be retained in our proposed configuration at the time of the 2020 Census. This will provide stability for the minority community that has not been achieved by prior versions of this district.

Finally, we note that the United States Supreme Court has previously found Section 2 liability in Wake County in a case involving legislative districts. *See Thornburg v Gingles*, 478 U. S. 30 (1986). Thus, with this adjustment to the First District, for the first time in history the black community in Wake County will have the opportunity to be part of a majority black Congressional district.

After we had adopted Congressman Butterfield's preference, and showed a map of our proposal to him, he expressed concern about the withdrawal of his district from Craven and Wayne Counties. Given our decision to add the minority community in Wake County to our proposed First District, the retention of populations in Wayne and Craven would result in the over-population of the First District. We believe that the benefits of adding the black community in Wake County outweighs any negative impacts. Moreover, by replacing these counties with the community in Wake County, we were also able to create a district that was based upon a more compact minority population.

Current District 12, represented by Congressman Watt, is not a Section 2 majority black district. Instead, it was created with the intention of making

it a very strong Democratic District. *See Easley v Cromartie* 121 S.Ct. 1452 (2000). However, there is one county in the Twelfth District that is covered by Section 5 of the Voting Rights Act (Guilford).

As with Congressman Butterfield, we sought input from Congressman Watt regarding potential options for revising the Twelfth Congressional district. We have accommodated Congressman Watt's preference by agreeing to model the new Twelfth District after the current Twelfth District.

Following the framework of the district created by the 2001 General Assembly, to the extent practicable and possible, we have again based the Twelfth Congressional District on whole precincts.

Because of the presence of Guilford County in the Twelfth District, we have drawn our proposed Twelfth District at a black voting age level that is above the percentage of black voting age population found in the current Twelfth District. We believe that this measure will ensure preclearance of the plan.

Finally, we have re-drawn the Twelfth District to reduce some population because 2010 census figures show that it is currently over-populated.

(b) Minority populations in other districts

No district in the 2001 Congressional plan contains a black voting age population in excess of 28.75% except for the First and Twelfth Districts. Our proposed Fourth Congressional District establishes one district with a black voting age population of 29.12%. Our proposed Third Congressional District contains a black voting age population of 23.50%. Our proposed District 8 has a black voting age population of 19.88% and a Native American voting age population of 7.12%. All other proposed districts have

been created with a black voting age population of under 18%.

We believe that our proposed plan fully complies with both Section 5 and Section 2 of the Voting Rights Act.

4. Point Contiguity.

In past Congressional plans, prior legislative leadership elected to make a few congressional districts contiguous by a mathematical point. We believe that this past practice is arbitrary and irrational. It is also inconsistent with the standards for contiguity established by the North Carolina Supreme Court for legislative districts. *Stephenson v Bartlett,* 357 N.C. 301 (2003). We have elected to reject this criterion for congressional districts. All of our congressional districts are contiguous in a real and meaningful manner.

5. Incumbents.

We decided to avoid placing incumbents in the same district. All incumbents in our proposed plan are located in a district in which they face no opposition from another sitting member of Congress.

6. Communities of Interest.

Communities of interest are political considerations which will always create some interests that will be recognized and others that will not. The elected representatives are best equipped to determine this balance.

Because all of our districts are largely based in the same areas of the state in which they are located under the 2001 congressional plan, our districts reflect the same communities of regional interests recognized by the 2001 plan.

New District 4 is substantially based upon the current version of District 4. We decided to expand the district from Chatham County through Lee and Harnett County and into Cumberland County. Lee and Harnett Counties share with Chatham County many of the same rural and other communities of interest. Moreover, the interests of those residing within the urban areas of Cumberland County are similar to those who live in the urban areas of Orange and

Durham Counties. Finally, all of the counties in our proposed District 4 are in the same media market which should help reduce the costs of campaigns in this district.

7. Whole counties and whole precincts.

Counties and precincts are two specific examples of communities of interest. Like other interests, they must be balanced. We have attempted to respect county lines and whole precincts when it was logical to do so and consistent with other relevant factors. Our plan includes 65 whole counties. Most of our precinct divisions were prompted by the creation of Congressman Butterfield's majority black First Congressional District or when precincts needed to be divided for compliance with the one person one vote requirement.

8. Urban Counties.

We decided to continue the tradition, as reflected in the 2001 plan that results in the division of urban counties into more than one Congressional district. We agree with the decision of prior legislative leadership that urban counties are best represented by multiple members of Congress. Moreover, creating multiple districts within an urban county makes it less likely that congressional districts in 2020 will

experience the significant population shifts that make the 2001 plan unbalanced. We extended this policy to Buncombe Comity but elected not to divide New Hanover County. We concluded that the population in New Hanover is more isolated in the southeastern corner of North Carolina and was needed to anchor our new proposed Seventh Congressional District.

9. Creating More Competitive Districts.

The federal and state constitutions allow legislatures to consider partisan impacts in making Congressional redistricting decisions. While we have not been ignorant of the partisan impacts of the districts we have created, we have focused on ensuring that the districts will be more competitive than the districts created by the 2001 legislature. Along these lines we wish to highlight several important facts. First, in twelve of our proposed thirteen districts, in the 2008 General Election, more voters voted for Democratic candidate for Attorney General, Roy Cooper than those who voted for the Republican candidate. Second, registered Democrats outnumber registered Republicans in ten of our proposed thirteen districts. Finally, the combination of registered Democrats plus unaffiliated voters constitute very significant majorities in all thirteen districts.

NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27603

Statement by Senator Bob Rucho and Representative David Lewis Regarding Proposed State Legislative Redistricting Plans
July 12, 2011

Today we are pleased to release our initial proposals for 2011 state legislative redistricting maps.

These maps are available on the General Assembly's website.

We will hold public hearings on these proposed plans on July 18, 2011, from 3:00 P.M. until 9:00 P.M. Locations for these hearings will include: the North Carolina Museum of History in Wake County, Fayetteville Technical Community College, Nash Community College, Roanoke-Chowan Community College, UNC Wilmington, Guilford Technical Community College, Central Piedmont Community College, Western Carolina University, Appalachian State University, and Asheville-Buncombe Technical Community College.

Individuals interested in providing comments should call the General Assembly or consult the General Assembly's web site for sign-up procedures.

North Carolina has been the subject of numerous legal challenges to redistricting plans. Given this history, our primary goal is to propose maps that will survive any possible legal challenge. The first legal requirement is that legislative districts comply with the "one person one vote" standard affirmed in *Stephenson v Bartlett*, 355 N.C. 354 (2002) *("Stephenson I")* and *Stephenson v Bartlett, 357 N. C. 301* (2003) *("Stephenson II")*. The second requirement is the creation of plans that will obtain preclearance under Section 5 of the Voting Rights Act ("VRA"), and foreclose the possibility of a successful challenge under Section 2 of the Voting Rights Act. Finally, plans must comply with State constitutional requirements as explained in the *Stephenson* decisions, and the decisions by the North Carolina

Supreme Court and the United States Supreme Court in *Strickland v Bartlett*, 361 N.C. 491 (2007), *affirmed, Bartlett v. Strickland*, 129 S.Ct. 1231 (2009).

1. One person, one vote

All of our districts have been constructed with sufficient population so that they are within plus or minus 5% of the ideal population for state senate districts (190,710) and state house districts (79,462).

2. Voting Rights Act districts ("VRA districts")

We have explained our understanding of the Voting Rights Act in our statement issued on June 17, 2011. In our original plans, we proposed nine majority black Senate districts and twenty four majority black House districts. "Majority" means in excess of 50% as required by the *Strickland* decision and affirmed by the US Supreme Court.

Based upon comments we received during the public hearing process, we have made several changes in our proposed VRA districts. For example, in the House plan, we elected to delete a majority black district we had proposed for southeastern North Carolina based upon the strong statements opposing such a district, including from the Southern Coalition for Social Justice ("SCSJ") as part of the broader Alliance for Fair Redistricting and Minority Voting Rights. The remaining 23 districts with a majority of black voting age population ("BVAP") combined with two over 40% BVAP districts, continue to provide black voters with a substantially proportional and equal opportunity to elect candidates of their choice. See *Johnson v DeGrandy*, 512 U.S. 997 (1994). Creating these districts also provides the State with a strong argument for preclearance of the plans under Section 5 of the

Voting Rights Act. Federal Register Vol. 76, no. 27 at 7471; Report by the United States House of Representatives, Committee on the Judiciary, 109th Congress, 2d Session, Report 109-478 at 68-72 (2006); *Beer v. United States*, 425 U.S. 130 (1976).

Consistent with feedback provided at the public hearings or in person and as permitted by law, we have also made other changes in our proposed House VRA districts affecting Rep. Mobley, Rep. Gill, Rep. Earle, and the elimination of the southeastern district described above.

In the Senate, we have made two significant changes. Hoke and Cumberland Counties have been combined to form a majority black district (District 21). In the 2003 Senate plan, minorities in Hoke County were included in District 13 which was a mixed minority district which has elected a white Senator. Under our revised proposal, the black community in Hoke will now be part of a cohesive majority black district which should be able to elect a candidate of the minority community's choice. Both Cumberland and Hoke are covered by Section 5 of the Voting Rights Act.

We have also elected to change our proposed Senate District 32 in Forsyth County to create a district with a percentage of BVAP (42.53%) which exceeds the percentage suggested for that district by the SCSJ.

Several of our critics have incorrectly argued that our plans "pack" African American voters. We have repeatedly asked Democratic leaders and others to provide a legal case which defines "packing" as either a majority black district or creating enough districts to give black voters a substantially equal and proportional opportunity to elect candidates of their

choice. To date, we have not received any case citations to this effect from any of our critics. Regardless, in 1982, these same arguments were considered and rejected by Congress when it amended Section 2 of the Voting Rights Act. See *Gingles v Edmisten*, 590 F. Supp. 345, 356-357 (E.D. N.C. 1984) (Phillips, J.), *affirmed, Thornburg v Gingles*, 478 U.S. 30 (1986).

Since March 17, 2011, we have repeatedly requested Democratic leaders and members of the minority community to provide us with proposed redistricting plans. To date, only the SCSJ has submitted alternative plans. In prior testimony, Anita Earls, Executive Director of the SCSJ, advised us that majority black districts are still needed in the State of North Carolina. Consistent with that testimony, the SCSJ has proposed nine senate districts with a BVAP from 40% to over 50%, twenty house districts with a BVAP from 40% to over 50%, and one house district with a BVAP of 37.06%. Even though all of the SCSJ districts have been drawn to achieve a specific level of black population, no one has accused the SCSJ of packing black voters.

There are two major differences between the SCSJ minority districts and our proposed VRA districts.

First, we have complied, as we must, with the holding by the United States Supreme Court and the North Carolina Supreme Court in *Strickland v Bartlett*, 361 N.C. 491 (2007), *affirmed, Bartlett v Strickland*, 129 U.S. 1231 (2009). These decisions require that districts drawn to insulate the State from liability under the Voting Rights Act must be drawn with a black voting age population in excess of 50% plus one.

Five of the nine districts SCSJ contends are "VRA" senate districts are drawn at majority black levels while four are drawn at levels above 40% BVAP. We have proposed ten senate districts with nine of those districts drawn at majority levels. We agree with the SCSJ that our tenth senate district, District 32, cannot be drawn within Forsyth County in excess of 50% plus one.

The SCSJ has also proposed eleven majority black house districts, nine house districts with black populations in excess of 40%, and one house district with black population at 37.5%. We have drawn all of our house districts at levels above 50% except for two districts in Forsyth County. We again agree with the position of the SCSJ that two majority BVAP districts cannot be drawn in Forsyth County.

Aside from the lack of black population in Forsyth County, which prevents a majority black senate district and two majority black house districts, in light of *Bartlett*, we see no principled legal reason not to draw all VRA districts at the 50% or above level when it is possible to do so. Now that it is apparent that these majority black districts can be drawn, any decision to draw a few selected districts at less than a majority level could be used as evidence of purposeful discrimination or in support of claims against the State filed under Section 2. Thus, in order to best protect the State from costly and unnecessary litigation, we have a legal obligation to draw these districts at true majority levels.

Second, we have a disagreement with the SCSI regarding the number of majority black districts that should be drawn in each map. SCSI has proposed nine districts it contends are "VRA" senate districts as compared to the ten districts in our proposed senate plan. In the House, the SCSI has

recommended 21 districts it contends are "VRA" districts as compared to the 25 districts we have suggested. Our proposed plan provides black voters in North Carolina with substantial or rough proportionality in the number of VRA districts in which they have an equal opportunity to elect their preferred candidates of choice. Our plans, therefore, give the State an important defense to any lawsuit that might be filed challenging the plans under Section 2 of the Voting Rights Act. *See Johnson v DeGrandy*, 512 U.S. 997 (1994). The plans proposed by the SCSI fail to give black voters a proportional and equal opportunity and therefore would not provide the State with this defense.

3. State Constitutional requirements

Our senate and house plans have been drawn in compliance with the State constitutional requirements stated in *Stephenson I* and *II*, along with the decision of the North Carolina Supreme Court in *Strickland v Bartlett*, 361 N.C. 491 (2007), *affirmed, Bartlett v Strickland*, 109 S.Ct. 1231 (2009). These decisions establish a hierarchy of constitutional rules for drawing districts within a whole county or combinations of counties. We encourage interested members of the public to consult these decisions as well as the *Legislator's Guide to North Carolina Legislative and Congressional Redistricting* published on the General Assembly's website.

We look forward to hearing comments and suggestions related to these proposed legislative maps during the public hearing scheduled for July 18, 2011.

NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27603

Joint Statement of Senator Bob Rucho and Representative David Lewis regarding the release of Rucho-Lewis Congress 2

On July 1, 2011, we released for public comment our first proposed Congressional Redistricting plan called "Rucho-Lewis Congress 1" ("Rucho-Lewis 1"). We believe that Rucho-Lewis 1 fully complies with all applicable federal and state legal requirements.

On July 7, 2011, we held public hearings on Rucho-Lewis 1 and received many comments and suggestions regarding our initial proposed plan.

Today, we are pleased to release "Rucho-Lewis Congress 2" ("Rucho-Lewis 2"), which constitutes a revision of our original plan. We have made several changes in this second proposed Congressional plan based upon comments received during the public hearings, comments on the General Assembly's website and feedback from members of Congress.

One of our goals is to create more competitive Congressional districts. In fact, John Dinan, Professor of Political Science from Wake Forest University, prepared an unsolicited report explaining how our initial proposed plan creates more competitive districts than the existing 2001 Congressional plan. Dr. Dinan's report is available for review on the General Assembly's web page and its redistricting link.

As explained by Professor Dinan, claims that we have engaged in extreme political gerrymandering, similar to what exists in the current versions of the Thirteenth, Second and Eighth Congressional

Districts, are overblown and inconsistent with the facts. For example, based upon the results of the 2008 General Election, Democratic Attorney General Candidate Roy Cooper would have carried twelve of thirteen districts in Rucho-Lewis 1 and all thirteen districts in Rucho-Lewis 2. In both of our proposals, registered Democrats are a majority in three congressional districts. There are no districts in which registered Republicans are a majority. In both proposals, registered Democrats outnumber registered Republicans in ten districts. Finally, in both proposals, the combination of registered Democrats and unaffiliated voters constitute a majority in all thirteen districts. Thus, in both of our proposals, there are three strong Democratic districts. There are also ten districts in which Democratic candidates have the potential to win, without a single Republican vote, provided they convey a message that appeals to their own registered Democrats and unaffiliated voters.

The changes found in Rucho-Lewis 2 stem in part from comments we received regarding our initial proposal for Congressman Butterfield's First District. Changes we have made to the First District have had a rippling impact on most of the remaining districts.

Some of our critics have suggested that the First District be eliminated from any new redistricting plan because of it shape. Those who have made this argument fail to understand that the 2011 General Assembly inherited the First District from prior General Assemblies and that prior General Assemblies enacted the First District in order to comply with Section 2 of the Voting Rights Act. For example, some of these same critics are apparently unaware that the shape of the First District has been approved by a federal district court as compliant with

the minority population "compactness" requirement for districts drawn to avoid liability under Section 2 of the Voting Rights Act. *Cromartie v Hunt*, 133 F.Supp.2d 407,423 (E.D.N.C. 2000). It would be legally imprudent to dissolve this district.

However, we cannot keep the 2001 version of the First District because of two flaws. First, the current First District is under-populated by over 97,000 people. Second, it does not include a majority black voting age population ("BVAP"), as required by Section 2 of the Voting Rights Act. *See Strickland v. Bartlett*, 129 U.S. 1231 (2009). Thus, any revision of the First District requires the addition of over 97,000 people. In addition, added population must include a sufficient number of African Americans so that the First District can re-establish as a majority black district.

Prior to our release of Rucho-Lewis 1, we discussed both of these problems with Congressman Butterfield. We believe that he understood and agreed that his district would be drawn into either Wake or Durham Counties to cure the district's equal population and voting rights deficiencies. We understood that Congressman Butterfield preferred that his district be drawn into Wake County instead of Durham. We also discussed with Congressman Butterfield that drawing his district into Wake County may result in the withdrawal from his district of one or more counties covered by Section 5 of the Voting Rights Act. Our understanding of Congressman Butterfield's preferences was reflected in our initial version of the First District found in Rucho-Lewis 1.

During our public hearings, several speakers expressed concerns about our decision to withdraw the First District from several counties covered by

Section 5 of the Voting Rights Act. Despite these complaints, we have received only one other proposal that would bring the First. District back to a majority black level. This sole proposed alternative drew the First District into Durham County instead of Wake. This proposal also included all of the Section 5 counties currently found in the 2001 version of the First District.

Following the public hearing, Congressman Butterfield issued a statement disputing our understanding of our prior discussions with him. Thus, as we now understand Congressman Butterfield's position regarding revisions to the First District, it appears that he may have no preference between drawing his district into either Wake or Durham Counties. We also assume that Congressman Butterfield would support keeping the black population in Section 5 counties at similar or higher levels as compared to the amount of black population in Section 5 counties under the 2001 version of the First District.

Based upon this feedback, in Rucho-Lewis 2, we have drawn the First District into Durham County instead of Wake. There is historical precedent for a district that combines Durham with counties located in eastern North Carolina. Moreover, our revised version of the First District brings it up to ideal population with other districts and re-establishes it as a majority black district.

While our initial version of the First District was fully compliant with Section 2 and Section 5 of the Voting Rights Act, our second version includes population from all of the Section 5 counties found in the 2001 version of the First District. Moreover, the total BVAP located in Section 5 counties in Rucho-

Lewis 2 exceeds the total BVAP currently found in the 2001 version.

Some of our critics have complained about the appearance of our proposed Twelfth District. Again, these critics fail to understand that we inherited District 12 from prior General Assemblies. Further, this district has been approved by the United States Supreme Court as a district lawfully drawn to elect a Democrat. *Easley v Cromartie*, 121 S.Ct. 1452 (2000). The District has also been precleared under Section 5 of the Voting Rights Act on at least two prior occasions.

In adopting the Twelfth District, we intended to accommodate the wishes expressed to us by Congressman Watt, as we understood them, to continue to include populations located in Mecklenburg, Guilford, and Forsyth Counties. Our revised version of this district makes it more compact and continues the district as a very strong Democratic district. Our revision of the Twelfth District is based upon whole precincts that voted heavily for President Obama in the 2008 General Election. We have been accused of illegally "packing" black voters into the Twelfth District and illegally "diluting" the "influence" of black voters. We have repeatedly asked our critics for any case law that supports these arguments and none has been provided. By continuing to maintain this district as a very strong Democratic district, we understand that districts adjoining the Twelfth District will be more competitive for Republican candidates.

STATE OF NORTH CAROLINA
COUNTY OF WAKE
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

11 CVS 16896
11 CVS 16940
*(Consolidated)*

MARGARET DICKSON; *et al.*,
*Plaintiffs,*

v.

ROBERT RUCHO, *et al.*
*Defendants.*

NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, *et al.*,
*Plaintiffs,*

v.

THE STATE OF NORTH CAROLINA, *et al.*,
*Defendants.*

# AFFIDAVIT OF R. ERIKA CHURCHILL

1. I am R. Erika Churchill, Principal Legislative Analyst with the North Carolina General Assembly. I have been employed by the North Carolina General Assembly since 2000, and in that capacity I have served as committee counsel to the standing committees of the General Assembly hearing redistricting matters, including the 2011 Senate Redistricting Committee and the 2011 House Redistricting Committee.

2. Counsel for the defendants has requested me to produce the following exhibits:

a. Exhibit 1. – Certain Minority General Election Congress Races 20042010.
b. Exhibit 2. – Certain Minority General Election Senate Races 2004-2010.
c. Exhibit 3. – Certain Minority General Election House Races 2004-2010.
d. Exhibit 4. – 2011 Senate Member's Seniority.
e. Exhibit 5. – 2011 House Member's Senoirity.
f. Exhibit 6. – North Carolina House of Representative General Election Winners, 2006-2012.
g. Exhibit 7. – North Carolina Senate General Election Winners, 2006-2012.

3. In preparing these Exhibits 1-3, I used or relied upon "Recent Election Contests with Minority Candidates," "Stat Packs," and "Deviation of Existing Populations from Ideal using 2010 Census Counts" for each of the relevant plans. This information is posted on the General Assembly's web page, and was available to the public and members of the General Assembly during the public hearings or legislative process prior to the enactment of the 2011 Senate, House, and Congressional Plans.

4. In preparing these Exhibits 1-3, I modified the reports entitled "Recent Election Contests with Minority Candidates" for the North Carolina Senate and House posted on the General Assembly's web page to include just the contested general election races in the following districts, by legislative body:

a. United States House of Representatives – Districts 1 and 12.

b. North Carolina Senate – Districts 14, 20, 21, 28, 38, and 40.

c. North Carolina House of Representatives – Districts 12, 21, 29, 31, 48, 99, and 107.

5. In preparing the Exhibit 1, I also relied upon the Campaign Finance Disclosure Portal maintained by the Federal Election Commission on its website, http://www. fec.gov. Staff of the The North Carolina State Board of Elections has also confirmed the search results. In relying upon the Federal Election Commission Campaign Finance Disclosure Portal, a search was performed for each candidate's "Two-Year Summary." If available, the candidate's disclosure for "Total Receipts" and "Total Disbursements" were used to complete the Exhibit.

6. In preparing the Exhibits 2 and 3, I also relied upon the NC Campaign Report Search function maintained by the North Carolina State Board of Elections on its website, http://www.app.sboe.state.nc.us/webapps/cfrpt_search_org/. In relying upon the North Carolina State Board of Elections search function, a search was performed for each candidate in a minority election race. If a political committee was found for that candidate, the Fourth Quarter report for the even numbered election year was used for the Total Receipts and Total Expenditures information, as disclosed by the candidate committee in the report. The image of the report filed by the candidate committee was the first option. If no information was contained in the image of the report, then the Data information was used, if present. If the Fourth Quarter report was not available and the candidate committee filed a Final Report, that Final Report was used for the Total Receipts and Total

Expenditures information in the same manner. If no information was contained in the report, or no reports were filed, "N/A" was placed in the chart for that candidate in that election year. Staff of the The North Carolina State Board of Elections has also confirmed and corrected, as needed, the search results.

7. In preparing Exhibits 2 and 3, it should be noted that effective December 1, 2009, G.S. 163-278.10A requires all candidates other than those for a county office, municipal office, local school board office, soil and water conservation district board or supervisors, or sanitary district board receiving less than one thousand dollars ($1,000) and expending less than one thousand dollars ($1,000) to file campaign finance reports. See Section 5 of Session Law 2009-534. However, between 1998 and December 1, 2009, only those candidates receiving or expending three thousand dollars ($3,000) or more were required to file campaign finance reports, regardless of the office sought. See Section 4(e) of Session Law 1997-515.

8. In producing Exhibits 4 and 5, I located documents produced and maintained by the North Carolina Senate Principal Clerk and North Carolina House Principal Clerk stating terms served by each member of the North Carolina Senate and North Carolina House of Representatives, as seated in January 2011, respectively.

9. In preparing Exhibits 6 and 7, I relied upon documents produced and maintained by the North Carolina Senate Principal Clerk and North Carolina House Principal Clerk stating membership of the North Carolina Senate and North Carolina House of Representatives, party affiliation for that

membership. I also relied upon voter registrations maintained by the State Board of Elections and membership in the Legislative Black Caucus maintained by the Principal Clerks of the North Carolina General Assembly to determine "Race" for Exhibits 6 and 7.

This the 19th day of December, 2012.

/s/ R. Erika Churchill
R. Erika Churchill
Sworn and subscribed before me
this the 19 day of December, 2012.
Notary Public
My commission expires: 3/22/16

## Certain Contested Congressional General Election Races 2004-2010

| | A | B | C | D | E | F | G | H | I | J | K | L | M | N | O |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | District | Year | Candidate | Party Affiliation | Race | Election | Outcome | Vote Total | % of Vote | Total Receipts | Total Expenditures | 2010 Total Pop | 2010 Ideal Population | Difference of 2010 Pop & Ideal | Deviation from 2010 Ideal Pop. |
| 2 | 1 | 2004 | G. K. Butterfield | Democrat | Black | General | Winner | 137,667 | 63.97% | $429,441 | $404,055 | 635,936 | 733,499 | -97563 | -13.3% |
| 3 | 1 | 2004 | Greg Dority | Republican | White | General | Defeated | 77,508 | 36.02% | $41,955 | $46,030 | 635,936 | 733,499 | -97563 | -13.3% |
| 4 | | | | | | | | | | | | | | | |
| 5 | 1 | 2008 | G.K. Butterfield | Democrat | Black | General | Winner | 192,765 | 70.28% | $792,331 | $703,696 | 635,936 | 733,499 | -97563 | -13.3% |
| 6 | 1 | 2008 | Dean Stephens | Republican | White | General | Defeated | 81,506 | 29.71% | N/A | N/A | 635,936 | 733,499 | -97563 | -13.3% |
| 7 | | | | | | | | | | | | | | | |
| 8 | 1 | 2010 | G. K. Butterfield | Democrat | Black | General | Winner | 103,294 | 59.31% | $828,116 | $794,383 | 635,936 | 733,499 | -97563 | -13.3% |
| 9 | 1 | 2010 | Ashley Woolard | Republican | White | General | Defeated | 70,867 | 40.69% | $134,393 | $134,386 | 635,936 | 733,499 | -97563 | -13.3% |
| 10 | | | | | | | | | | | | | | | |
| 11 | 12 | 2004 | Mel Watt | Democrat | Black | General | Winner | 154,908 | 66.82% | $579,199 | $519,885 | 736,346 | 733,499 | 2847 | 0.4% |
| 12 | 12 | 2004 | Ada M. Fisher | Republican | Black | General | Defeated | 76,898 | 33.17% | $108,189 | $104,668 | 736,346 | 733,499 | 2847 | 0.4% |
| 13 | | | | | | | | | | | | | | | |
| 14 | 12 | 2006 | Mel Watt | Democrat | Black | General | Winner | 71,345 | 67% | $503,515 | $535,747 | 736,346 | 733,499 | 2847 | 0.4% |
| 15 | 12 | 2006 | Ada M. Fisher^ | Republican | Black | General | Defeated | 35,127 | 32.99% | $444,044 | $446,782 | 736,346 | 733,499 | 2847 | 0.4% |
| 16 | | | | | | | | | | | | | | | |
| 17 | 12 | 2008 | Mel Watt | Democrat | Black | General | Winner | 215,908 | 71.55% | $680,473 | $646,079 | 736,346 | 733,499 | 2847 | 0.4% |
| 18 | 12 | 2008 | Ty Cobb, Jr. | Republican | White | General | Defeated | 85,814 | 28.44% | $25,306 | $25,584 | 736,346 | 733,499 | 2847 | 0.4% |
| 19 | | | | | | | | | | | | | | | |
| 20 | 12 | 2010 | Mel Watt | Democrat | Black | General | Winner | 103,495 | 63.88% | $604,718 | $591,203 | 736,346 | 733,499 | 2847 | 0.4% |
| 21 | 12 | 2010 | Lon Cecil | Libertarian | White | General | Defeated | 3,197 | 1.97% | $13,041 | $12,995 | 736,346 | 733,499 | 2847 | 0.4% |
| 22 | 12 | 2010 | Greg Dority | Republican | White | General | Defeated | 55,315 | 34.14% | N/A | N/A | 736,346 | 733,499 | 2847 | 0.4% |
| 23 | | | | | | | | | | | | | | | |
| 24 | | | | | | | | | | | | | | | |
| 25 | | | ^ Campaign receipts and expenditures for this year are those indicated by the FEC website as of 11:15 am, Wednesday, December 19, 2 | | | | | | | | | | | | |

Ex. 1

## Certain Minority Contested General Election Races

### North Carolina Senate 2004-2010

| | A | B | C | D | E | F | G | H | I | J | K | L | M | N |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | District | Year | Candidate | Party Affiliation | Race | Outcome | Vote Total | % of Vote | Total Receipts | Total Expenditures | 2010 Total Pop | 2010 Ideal Pop | Difference of 2010 Pop & Ideal | Deviation from 2010 Ideal Pop |
| 2 | 14 | 2004 | Vernon Malone | Democrat | Black | Winner | 45,727 | 64.11% | $137,042.52 | $165,589.84 | 232,514 | 190,710 | 41,804 | 21.9% |
| 3 | 14 | 2004 | John Odoom | Republican | Black | Defeated | 25,595 | 35.89% | $4,875.00 | $4,875.00 | 232,514 | 190,710 | 41,804 | 21.9% |
| 4 | | | | | | | | | | | | | | |
| 5 | 14 | 2006 | Vernon Malone | Democrat | Black | Winner | 26,404 | 65.93% | $281,835.34 | $276,380.39 | 232,514 | 190,710 | 41,804 | 21.9% |
| 6 | 14 | 2006 | J. Richard Doeffinger | Republican | White | Defeated | 13,644 | 34.07% | $1,061.00 | $1,031.85 | 232,514 | 190,710 | 41,804 | 21.9% |
| 7 | | | | | | | | | | | | | | |
| 8 | 14 | 2008 | Vernon Malone | Democrat | Black | Winner | 67,823 | 69.45% | $108,084.24 | $74,721.27 | 232,514 | 190,710 | 41,804 | 21.9% |
| 9 | 14 | 2008 | Carol B. Dalenko | Republican | White | Defeated | 29,835 | 30.55% | $1,692.54 | $1,692.54 | 232,514 | 190,710 | 41,804 | 21.9% |
| 10 | | | | | | | | | | | | | | |
| 11 | 14 | 2010 | Daniel T. Blue, Jr. | Democrat | Black | Winner | 40,746 | 65.92% | $187,613.53 | $176,464.58 | 232,514 | 190,710 | 41,804 | 21.9% |
| 12 | 14 | 2010 | Geoffrey M. Hurlburt | Republican | 2 or more | Defeated | 21,067 | 34.08% | $646.61 | $547.66 | 232,514 | 190,710 | 41,804 | 21.9% |
| 13 | | | | | | | | | | | | | | |
| 14 | 20 | 2004 | Jeanne H. Lucas* | Democrat | Black | Winner | 55,050 | 90.24% | $29,006.50 | $31,861.89 | 181,624 | 190,710 | -9,086 | -4.8% |
| 15 | 20 | 2004 | Ray Ubinger | Libertarian | N/A | Defeated | 5,953 | 9.76% | Threshold | Threshold | 181,624 | 190,710 | -9,086 | -4.8% |
| 16 | | | | | | | | | | | | | | |
| 17 | 20 | 2008 | Floyd B. McKissick, Jr. | Democrat | Black | Winner | 64,178 | 73.58% | $36,619.25 | $21,165.30 | 181,624 | 190,710 | -9,086 | -4.8% |
| 18 | 20 | 2008 | David C. Rollins | Libertarian | White | Defeated | 3,377 | 3.87% | N/A | N/A | 181,624 | 190,710 | -9,086 | -4.8% |
| 19 | 20 | 2008 | Kenneth R. Chandler | Republican | N/A | Defeated | 19,666 | 22.55% | N/A | N/A | 181,624 | 190,710 | -9,086 | -4.8% |
| 20 | | | | | | | | | | | | | | |
| 21 | 20 | 2010 | Floyd B. McKissick, Jr. | Democrat | Black | Winner | 38,309 | 73.11% | $28,827.55 | $35,440.31 | 181,624 | 190,710 | -9,086 | -4.8% |
| 22 | 20 | 2010 | John P. Tarantino, Jr. | Republican | Other | Defeated | 14,092 | 26.89% | N/A | N/A | 181,624 | 190,710 | -9,086 | -4.8% |
| 23 | | | | | | | | | | | | | | |
| 24 | 21 | 2004 | Larry Shaw | Democrat | Black | Winner | 27,866 | 61.21% | $19,800.00 | $15,437.21 | 164,117 | 190,710 | -26,593 | -13.9% |
| 25 | 21 | 2004 | Brian Irving | Libertarian | Undes. | Defeated | 1,225 | 2.69% | Threshold | Threshold | 164,117 | 190,710 | -26,593 | -13.9% |
| 26 | 21 | 2004 | Richard D. Evans | Republican | 2 or more | Defeated | 16,434 | 36.10% | $1,311.20 | $422.82 | 164,117 | 190,710 | -26,593 | -13.9% |
| 27 | | | | | | | | | | | | | | |
| 28 | 21 | 2006 | Larry Shaw | Democrat | Black | Winner | 13,412 | 61.65% | $39,258.77 | $42,123.63 | 164,117 | 190,710 | -26,593 | -13.9% |
| 29 | 21 | 2006 | Juanita M. Gonzalez | Republican | White | Defeated | 8,344 | 38.35% | $26,151.05 | $26,075.14 | 164,117 | 190,710 | -26,593 | -13.9% |
| 30 | | | | | | | | | | | | | | |

Ex. 2

## Certain Minority Contested General Election Races
### North Carolina Senate 2004-2010

| | A | B | C | D | E | F | G | H | I | J | K | L | M | N |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | District | Year | Candidate | Party Affiliation | Race | Outcome | Vote Total | % of Vote | Total Receipts | Total Expenditures | 2010 Total Pop | 2010 Ideal Pop | Difference of 2010 Pop & Ideal | Deviation from 2010 Ideal Pop |
| 31 | 21 | 2010 | Eric L. Mansfield | Democrat | Black | Winner | 21,004 | 67.61% | $178,878.38 | $176,548.54 | 164,117 | 190,710 | -26,593 | -13.9% |
| 32 | 21 | 2010 | Wade R. Fowler, Jr. | Republican | White | Defeated | 10,062 | 32.39% | $40,559.99 | $49,777.95 | 164,117 | 190,710 | -26,593 | -13.9% |
| 33 | | | | | | | | | | | | | | |
| 34 | 28 | 2010 | Gladys A. Robinson | Democrat | Black | Winner | 21,496 | 47.38% | $69,748.12 | $60,889.15 | 177,037 | 190,710 | -26,593 | -13.9% |
| 35 | 28 | 2010 | Trudy Wade | Republican | White | Defeated | 17,383 | 38.69% | $59,487.80 | $57,679.16 | 177,037 | 190,710 | -13,673 | -7.2% |
| 36 | 28 | 2010 | Bruce Davis | Unaffiliated | Black | Defeated | 6,054 | 13.47% | $26,417.91 | $24,408.13 | 177,037 | 190,710 | -13,673 | -7.2% |
| 37 | | | | | | | | | | | | | | |
| 38 | 38 | 2008 | Charlie Dannelly | Democrat | Black | Winner | 67,755 | 73.33% | $24,399.82 | $30,564.79 | 238,282 | 190,710 | 47,572 | 24.9% |
| 39 | 38 | 2008 | C. Travis Wheat | Libertarian | White | Defeated | 2,588 | 2.80% | Threshold | Threshold | 238,282 | 190,710 | 47,572 | 24.9% |
| 40 | 38 | 2008 | James R. Soder | Republican | White | Defeated | 22,056 | 23.87% | Threshold | Threshold | 238,282 | 190,710 | 47,572 | 24.9% |
| 41 | | | | | | | | | | | | | | |
| 42 | 38 | 2010 | Charlie Dannelly | Democrat | Black | Winner | 33,692 | 68.67% | $24,179.42 | $28,791.81 | 238,282 | 190,710 | 54,523 | 28.6% |
| 43 | 38 | 2010 | Cedric Scott | Republican | Black | Defeated | 15,369 | 31.33% | $260.00 | $253.11 | 238,282 | 190,710 | 54,523 | 28.6% |
| 44 | | | | | | | | | | | | | | |
| 45 | 40 | 2004 | Malcolm Graham | Democrat | Black | Winner | 47,096 | 57.88% | $145,170.00 | $123,330.05 | 245,233 | 190,710 | 54,523 | 28.6% |
| 46 | 40 | 2004 | Brian Sisson | Republican | White | Defeated | 30,633 | 42.12% | $15,382.06 | $15,382.06 | 245,233 | 190,710 | 54,523 | 28.6% |
| 47 | | | | | | | | | | | | | | |
| 48 | 40 | 2006 | Malcolm Graham | Democrat | Black | Winner | 21,247 | 61.48% | $52,825.00 | $35,536.32 | 245,233 | 190,710 | 54,523 | 28.6% |
| 49 | 40 | 2006 | Mr. Ed Mulheren | Republican | White | Defeated | 13,314 | 38.52% | N/A | N/A | 245,233 | 190,710 | 54,523 | 28.6% |
| 50 | | | | | | | | | | | | | | |
| 51 | 40 | 2008 | Malcolm Graham | Democrat | Black | Winner | 66,307 | 66.96% | $40,075.00 | $46,841.00 | 245,233 | 190,710 | 54,523 | 28.6% |
| 52 | 40 | 2008 | Mr. Ed Mulheren | Republican | White | Defeated | 32,711 | 33.04% | $0.00 | $0.00 | 245,233 | 190,710 | 54,523 | 28.6% |
| 53 | | | | | | | | | | | | | | |
| 54 | 40 | 2010 | Malcolm Graham | Democrat | Black | Winner | 32,168 | 58.16% | $55,750.88 | $38,583.64 | 245,233 | 190,710 | 54,523 | 28.6% |
| 55 | 40 | 2010 | John Aneralla | Republican | White | Defeated | 23,145 | 41.84% | $70,744.98 | $69,199.76 | 245,233 | 190,710 | 54,523 | 28.6% |
| 56 | | | | | | | | | | | | | | |
| 57 | | | | | | | | | | | | | | |
| 58 | | | | | | | | | | | | | | |
| 59 | | | | | | | | | | | | | | |

## Certain Minority Contested General Election Races
## North Carolina House of Representative 2004-2010

| | A | B | C | D | E | F | G | H | I | J | K | L | M | N |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | House District | Year | Candidate | Party Affiliation | Race | Outcome | Vote Total | % of Vote | Total Receipts | Total Expenditures | 2010 Total Pop | 2010 Ideal Pop | Difference of 2010 Pop & Ideal | Deviation from 2010 Ideal Pop |
| 2 | 12 | 2004 | William L. Wainwright | Democrat | Black | Winner | 13,573 | 64.49% | $76,225.89 | $70,171.80 | 63,600 | 79,462 | -15,862 | -19.96% |
| 3 | 12 | 2004 | John P. Wetherington Jr. | Republican | White | Defeated | 7,473 | 35.51% | $5,859.92 | $10,629.79 | 63,600 | 79,462 | -15,862 | -19.96% |
| 4 | | | | | | | | | | | | | | |
| 5 | 12 | 2006 | William L. Wainwright | Democrat | Black | Winner | 7,941 | 66.28% | $134,997.20 | $119,798.73 | 63,600 | 79,462 | -15,862 | -19.96% |
| 6 | 12 | 2006 | John P. Wetherington Jr. | Republican | White | Defeated | 4,040 | 33.72% | $19,460.00 | $19,144.00 | 63,600 | 79,462 | -15,862 | -19.96% |
| 7 | | | | | | | | | | | | | | |
| 8 | 12 | 2008 | William L Wainwright | Democrat | Black | Winner | 17,659 | 69.14% | $155,271.31 | $97,125.39 | 63,600 | 79,462 | -15,862 | -19.96% |
| 9 | 12 | 2008 | Mark Wesley Griffin | Republican | White | Defeated | 7,882 | 30.86% | $4,884.65 | $4,755.29 | 63,600 | 79,462 | -15,862 | -19.96% |
| 10 | | | | | | | | | | | | | | |
| 11 | 12 | 2010 | William L Wainwright | Democrat | Black | Winner | 9,350 | 60.21% | $223,051.00 | $153,528.46 | 63,600 | 79,462 | -15,862 | -19.96% |
| 12 | 12 | 2010 | Mark Wesley Griffin | Republican | White | Defeated | 6,206 | 39.79% | $11,252.81 | $8,525.51 | 63,600 | 79,462 | -15,862 | -19.96% |
| 13 | | | | | | | | | | | | | | |
| 14 | 21 | 2010 | Larry M Bell | Democrat | Black | Winner | 11,678 | 65.59% | $23,671.32 | $27,906.34 | 69,625 | 79,462 | -9,837 | -12.38% |
| 15 | 21 | 2010 | Deann Gray Poirier | Republican | White | Defeated | 6,126 | 34.41% | $1,732.00 | $1,732.00 | 69,625 | 79,462 | -9,837 | -12.38% |
| 16 | | | | | | | | | | | | | | |
| 17 | 29 | 2008 | Larry Hall | Democrat | Black | Winner | 31,524 | 90.73% | $79,595.00 | $22,931.60 | 70,046 | 79,462 | -9,416 | -11.85% |
| 18 | 29 | 2008 | Justin Lallinger | Libertarian | White | Defeated | 3,219 | 9.27% | N/A | N/A | 70,046 | 79,462 | -9,416 | -11.85% |
| 19 | | | | | | | | | | | | | | |
| 20 | 31 | 2004 | H M. (Mickey) Michaux | Democrat | Black | Winner | 23,313 | 85.98% | $5,500.00 | $5,940.45 | 91,274 | 79,462 | 11,812 | 14.86% |
| 21 | 31 | 2004 | Michael P. Owen | Libertarian | White | Defeated | 3,802 | 14.02% | Threshold | Threshold | 91,274 | 79,462 | 11,812 | 14.86% |
| 22 | | | | | | | | | | | | | | |
| 23 | 31 | 2010 | H M Mickey Michaux | Democrat | Black | Winner | 18,801 | 75.50% | $84,600.00 | $10,564.34 | 91,274 | 79,462 | 11,812 | 14.86% |
| 24 | 31 | 2010 | Patricia L Ladd | Republican | White | Defeated | 6,102 | 24.50% | $1,828.85 | $1,798.85 | 91,274 | 79,462 | 11,812 | 14.86% |
| 25 | | | | | | | | | | | | | | |
| 26 | 48 | 2010 | Garland E. Pierce | Democrat | Black | Winner | 9,698 | 74.80% | $46,557.98 | $44,607.76 | 66,444 | 79,462 | -13,018 | -16.38% |
| 27 | 48 | 2010 | John F. Harry | Republican | Other | Defeated | 3,267 | 25.20% | $2,982.13 | $2,978.76 | 66,444 | 79,462 | -13,018 | -16.38% |
| 28 | | | | | | | | | | | | | | |
| 29 | 99 | 2008 | Nick Mackey | Democrat | Black | Winner | 28,306 | 65.32% | $19,708.41 | $19,469.06 | 112,312 | 79,462 | 32,850 | 41.34% |
| 30 | 99 | 2008 | Dempsey Miller | Republican | Black | Defeated | 14,925 | 34.68% | $10,281.99 | $9,974.17 | 112,312 | 79,462 | 32,850 | 41.34% |
| 31 | | | | | | | | | | | | | | |
| 32 | | | | | | | | | | | | | | |

## Certain Minority Contested General Election Races
### North Carolina House of Representative 2004-2010

| | A | B | C | D | E | F | G | H | I | J | K | L | M | N |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | House District | Year | Candidate | Party Affiliation | Race | Outcome | Vote Total | % of Vote | Total Receipts | Total Expenditures | 2010 Total Pop | 2010 Ideal Pop | Difference of 2010 Pop & Ideal | Deviation from 2010 Ideal Pop |
| 33 | 99 | 2010 | Rodney W. Moore | Democrat | Black | Winner | 15,591 | 72.01% | $9,155.00 | $8,213.42 | 112,312 | 79,462 | 32,850 | 41.34% |
| 34 | 99 | 2010 | Michael T. Wilson | Republican | White | Defeated | 6,059 | 27.99% | $207.00 | $207.00 | 112,312 | 79,462 | 32,850 | 41.34% |
| 35 | | | | | | | | | | | | | | |
| 36 | 107 | 2004 | W. Pete Cunningham | Democrat | Black | Winner | 16,807 | 68.20% | $25,775.00 | $19,731.84 | 67,799 | 79,462 | -11,663 | -14.68% |
| 37 | 107 | 2004 | Kenny Houck | Republican | Undesign. | Defeated | 7,836 | 31.80% | Threshold | Threshold | 67,799 | 79,462 | -11,663 | -14.68% |
| 38 | | | | | | | | | | | | | | |
| 39 | 107 | 2008 | Kelly Alexander | Democrat | Black | Winner | 27,502 | 75.26% | $28,437.80 | $21,669.27 | 93,460 | 79,462 | 13,998 | 17.62% |
| 40 | 107 | 2008 | Gary Hardee | Republican | White | Defeated | 9,043 | 24.74% | Threshold | Threshold | 93,460 | 79,462 | 13,998 | 17.62% |
| 41 | | | | | | | | | | | | | | |
| 42 | 107 | 2010 | Kelly Alexander | Democrat | Black | Winner | 13,132 | 67.26% | $12,953.45 | $9,974.85 | 93,460 | 79,462 | 13,998 | 17.62% |
| 43 | 107 | 2010 | Debbie Ware | Republican | White | Defeated | 6,392 | 32.74% | $330.15 | $330.15 | 93,460 | 79,462 | 13,998 | 17.62% |

Ex. 4

NORTH CAROLINA GENERAL ASSEMBLY
SENATE .2011 SESSION Senate Seniority

| Name | Party | Senate Terms Only | Senate and House |
|---|---|---|---|
| AlIran, Austin M. | Rep | 13 | 16 |
| Forrester, James "Jim" | Rep | 11 | 11 |
| Hartsell, Fletcher L. "Fletch" | Rep | 11 | 11 |
| Dannelly, Charlie S. | Dem | 9+ | 9+ |
| Kinnaird, Eleanor "Ellie" | Dem | 8 | 8 |
| Purcell, William R. "Bill" | Dem | 7+ | 7+ |
| Clodfelter, Daniel G. "Dan" | Dem | 7 | 7 |
| East, Don W. | Rep | 7 | 7 |
| Garrou, Linda | Dem | 7 | 7 |
| Berger, Philip E"Phil" | Rep | 6 | 6 |
| Bingham, Stan | Rep | 6 | 6 |
| Rucho, Robert "Bob" | Rep | 6+ | 6+ |
| Apodaca, Tom | Rep | 5 | 5 |
| Blake, Harris | Rep | 5 | 5 |
| Brock, Andrew C. | Rep | 5 | 5 |
| Jenkins, S. Clark | Dem | 5 | 5 |

| | | | |
|---|---|---|---|
| Stevens, Richard Y. | Rep | 5 | 5 |
| Tillman, Jerry W. | Rep | 5 | 5 |
| Nesbitt, Martin L. | Dem | 4+ | 15+ |
| Atwater, Bob | Dem | 4 | 4 |
| Berger, Doug | Dem | 4 | 4 |
| Brown, Harry | Rep | 4 | 4 |
| Graham, Malcolm | Dem | 4 | 4 |
| Hunt, Neal | Rep | 4 | 4 |
| Brunstette, Peter S. "Pete" | Rep | 3+ | 3+ |
| Jones, Edward W. "Ed" | Dem | 3 | 4+ |
| Preston, Jean R, | Rep | 3 | 10 |
| McKissick, Floyd B. | Dem | 2+ | 2+ |
| Clary, Debbie A. | Rep | 2 | 9 |
| Rouzer, David | Rep | 2 | 2 |
| Stein, Joshua H. | Dem | 2 | 2 |
| Vaughan, Donald R. "Don" | Dem | 2 | 2 |
| Blue, Daniel T. "Dan" | Dem | 1+ | 14+ |
| Walters, Michael P. | Dem | 1+ | 1+ |
| Daniel, Warren T. | Rep | 1 | 1 |
| Davis, James W. | Rep | I | 1 |
| Goolsby, Thomas C. | Rep | 1 | 1 |

| | | | |
|---|---|---|---|
| Gunn, Richard W. | Rep | 1 | 1 |
| Harrington, Kathryn | Rep | 1 | 1 |
| Hise, Ralph E. | Rep | 1 | 1 |
| Jackson, Brent | Rep | 1 | 1 |
| Mansfield, Eric L. | Dem | 1 | 1 |
| Meredith, Wesley A. | Rep | 1 | 1 |
| Newton, E.S. Buck | Rep | 1 | 1 |
| Pate, Jr., Louis M. | Rep | 1 | 5 |
| Rabon, William P. | Rep | 1 | 1 |
| Robinson, Gladys A. | Dem | 1 | 1 |
| Soucek, Daniel F. | Rep | 1 | 1 |
| Tucker, Tommy | Rep | 1 | 1 |
| White, Stan | Dem | 1 | 1 |

+ A portion of a term. 05/02/2011

North Carolina General Assembly
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# HOUSE OF REPRESENTATIVES TERMS SERVED IN GENERAL ASSEMBLY, HOUSE AND SENATE INCLUDING 2011

18 Terms
Harold J. Brubaker

16.5 Terms
Henry M. Michaux, Jr.

16 Terms
Joe Hackney

14 Terms
James W. Crawford, Jr.

12 Terms
N. Leo Daughtry (2 Sen.)
Julia C. Howard

11.5 Terms
Jerry C. Dockham

11 Terms
Paul Luebke
William L. Wainwright

10 Terms
Martha B. Alexander
Dewey L. Hill Maggie Jeffus

9.5 Terms
Alma Adams

9 Terms
Beverly M. Earle

Daniel F. McComas
Bill Owens
Edgar V. Starnes
Larry Womble

8 Terms
Pryor Gibson
Verla Insko
Joe P. Tolson

7 Terms
John M. Blust (I Sen.)
Mitch Gillespie
R. Phillip Haire
Marian N. McLawhorn
Mitchell S. Setzer
Edith D. Warren

6.5 Terms
Jennifer Weiss
Roger West

6 Terms
Jeff Barnhart
Larry M. Bell
Mark K. Hilton
Linda P. Johnson
Marvin W. Lucas
Johnathan Rhyne, Jr.
Paul Stam

5 Terms
Alice L. Bordsen
Becky Carney
Jean Farmer-Butterfield
Phillip Frye

Rick Glazier
Carolyn H. Justice
David R. Lewis
Wm. C. "Bill" McGee
Tim Moore
Earline W. Parmon
Ray Rapp
Deborah K. Ross

4.5 Terms

Susan C. Fisher
Fred F. Steen, II

4 Terms

Larry R. Brown
George G. Cleveland
William A. Current, Sr.
Nelson Dollar
Bill Faison
Dale R. Folwell
Pricey Harrison
Bryan R. Holloway
James H. Langdon, Jr.
Grier Martin
Garland E. Pierce
W. A. (Winkie) Wilkins, Jr.
Michael H. Wray

3.5 Terms

Larry D. Hall
Timothy L. Spear

3 Terms

Marilyn Avila
William D. Brisson

Angela R. Bryant
Pat B. Hurley
Ric Killian
Stephen A. LaRoque
Pat McElraft
Annie W. Mobley
Ruth Samuelson
Thom Tillis

2.5 Terms

Kelly M. Alexander, Jr.
Tricia Ann Cotham

2 Terms

Hugh Blackwell
James L. Boles, Jr.
Justin P. Burr
Elmer Floyd
W. David Guice
Mark W. Hollo
Darren G. Jackson
Darrell G. McCormick
Grey Mills
Shirley B. Randleman
Elton M. Sager
Sarah Stevens

1.5 Terms

Rosa U. Gill
Frank Iler
Dan W. Ingle
Patsy Keever
Diane Parfitt

1 Term

Glen Bradley
Marcus Brandon
William Brawley
Rayne Brown
Jeff Collins
Bill Cook
Jimmy Dixon
John Faircloth
Ken Goodman
Charles Graham
Mike D. Hager
Susi H. Hamilton
Kelly E. Hastings
D. Craig Horn
Bert Jones
Jonathan C. Jordan
Chuck McGrady
Tim D. Moffitt
Rodney W. Moore
Tom Murry
G. L. Pridgen
Norman W. Sanderson
Phil Shepard
Mike C. Stone
John A. Torbett
Harry Warren

Terms served are stated as of the beginning of 2011 Session 12/19/12 TR

North Carolina House of Representatives General Election Winners

2006 General Election

| District | Winner | Race |
|---|---|---|
| 1 | Owens, W.C. (Bill) | White |
| 2 | Spear, Timothy | White |
| 3 | Underhill, Alice | White |
| 4 | Tucker, Russell | White |
| 5 | Hunter, Howard | Black |
| 6 | Williams, Arthur | White |
| 7 | Jones, Edward | Black |
| 8 | Warren, Edith | White |
| 9 | McLawhorn, Marian | White |
| 10 | Braxton, R. Van | White |
| 11 | Pate, Louis | White |
| 12 | Wainwright, William | Black |
| 13 | McElraft, Pat | White |
| 14 | Cleveland, George | White |
| 15 | Grady, W. Robert | White |
| 16 | Justice, Carolyn H. | White |
| 17 | Stiller, Banner L. | White |
| 18 | **Wright, Thomas** | Black |
| 19 | McComas, Daniel | White/Hispanic |
| 20 | Hill, Dewey | White |
| 21 | Bell, Larry | Black |
| 22 | Brisson, William | White |
| 23 | Tolson, Joe | White |
| 24 | Farmer-Butterfield, Jean | Black |
| 25 | Daughtridge, Bill | White |
| 26 | Daughtry, N. Leo | White |

| | | |
|---|---|---|
| 27 | Wray, Michael | White |
| 28 | Langdon, James | White |
| 29 | Hall, Larry | Black |
| 30 | Luebke, Paul | White |
| 31 | Michaux, Henry | Black |
| 32 | Crawford, James | White |
| 33 | Allen, Bernard ** | Black |
| 34 | Martin, Grier | White |
| 35 | Weiss, Jennifer | White |
| 36 | Dollar, Nelson | White |
| 37 | Stam, Paul | White |
| 38 | Ross, Deborah | White |
| 39 | Coleman, Linda | Black |
| 40 | Avila, Marilyn | White |
| 41 | Harrell, Ty | Black |
| 42 | Lucas, Marvin | Black |
| 43 | McAllister, Mary | Black |
| 44 | Dickson, Margaret | White |
| 45 | Glazier, Rick | White |
| 46 | Yongue, Douglas | White |
| 47 | Sutton, Ronnie | American Indian |
| 48 | Pierce, Garland | Black |
| 49 | Allen, Lucy | White |
| 50 | Faison, Bill | White |
| 51 | Love, Jimmy | White |
| 52 | Boylan, Joe | White |
| 53 | Lewis, David | White |
| 54 | Hackney, Joe | White |
| 55 | Wilkins, W.A. (Winkle) | White |
| 56 | Insko, Verla | White |
| 57 | Harrison, Pricey | White |
| 58 | Adams, Alma | Black |
| 59 | Jeffus, Maggie | White |
| 60 | Jones, Earl | Black |

| | | |
|---|---|---|
| 61 | Wiley, Laura | White |
| 62 | Blust, John | White |
| 63 | Bordsen, Alice | White |
| 64 | Allred, Cary | White |
| 65 | Cole, Nelson | White |
| 66 | Goodwin, Melanie | White |
| 67 | Almond, David | White |
| 68 | Blackwood, Curtis | White |
| 69 | Gibson, Pryor | White |
| 70 | Hurley, Pat | White |
| 71 | Womble, Larry | Black |
| 72 | Parmon, Earline | Black |
| 73 | Brown, Larry | White |
| 74 | Folwell, Dale | White |
| 75 | McGee, Wm. C. (Bill) | White |
| 76 | Steen, Fred | White |
| 77 | Coates, Lorene | White |
| 78 | Brubaker, Harold | White |
| 79 | Howard, Julia | White |
| 80 | Dockham, Jerry | White |
| 81 | Holliman, Hugh | White |
| 82 | Barnhart, Jeff | White |
| 83 | Johnson, Linda | White |
| 84 | Frye, Phillip | White |
| 85 | Gillespie, Mitch | White |
| 86 | Church, Walter | White |
| 87 | Starnes, Edgar | White |
| 88 | Warren, Ray | White |
| 89 | Setzer, Mitchell | White |
| 90 | Harrell, Jim | White |
| 91 | Holloway, Bryan | White |
| 92 | Holmes, George | White |
| 93 | Tarleton, Cullie | White |
| 94 | Walker, R. Tracy | White |
| 95 | Ray, Karen | White |

| | | |
|---|---|---|
| 96 | Hilton, Mark | White |
| 97 | Kiser, Joe | White |
| 98 | Tillis, Thom | White |
| 99 | Saunders, Drew | White |
| 100 | Black, James | White |
| 101 | Earle, Beverly | Black |
| 102 | Carney, Becky | White |
| 103 | Gulley, Jim | White |
| 104 | Samuelson, Ruth | White |
| 105 | Killian, Ric | White |
| 106 | Alexander, Martha | White |
| 107 | Cunningham, W. Pete | Black |
| 108 | Neumann, Wil | White |
| 109 | Current, William | White |
| 110 | Clary, Debbie | White |
| 111 | Moore, Tim | White |
| 112 | England, Bob | White |
| 113 | Walend, Trudi | White |
| 114 | Fisher, Susan | White |
| 115 | Goforth, Bruce | White |
| 116 | Thomas, Charles | White |
| 117 | Justus, Carolyn | White |
| 118 | Rapp, Ray | White |
| 119 | Haire, R. Phillip | White |
| 120 | West, Roger | White |

2008 General Election

| District | Winner | Race |
|---|---|---|
| 1 | Owens, W.C. (Bill) | White |
| 2 | Spear, Timothy | White |
| 3 | Underhill, Mice | White |
| 4 | Tucker, Russell | White |
| 5 | Mobley, Annie* | Black |
| 6 | Williams, Arthur | White |

| | | |
|---|---|---|
| 7 | Bryant, Angela* | Black |
| 8 | Warren, Edith | White |
| 9 | McLawhorn, Marian | White |
| 10 | Braxton, R. Van | White |
| 11 | Sager, Efton | White |
| 12 | Wainwright, William | Black |
| 13 | McElraft, Pat | White |
| 14 | Cleveland, George | White |
| 15 | Grady, W. Robert | White |
| 16 | Justice, Carolyn H. | White |
| 17 | Stiller, Bonner L. | White |
| 18 | Hughes, Sandra Spaulding* | Black |
| 19 | McComas, Daniel | White/Hispanic |
| 20 | Hill, Dewey | White |
| 21 | Bell, Larry | Black |
| 22 | Brisson, William | White |
| 23 | Tolson, Joe | White |
| 24 | Farmer-Butterfield, Jean | Black |
| 25 | Stewart, Randy | White |
| 26 | Daughtry, N. Leo | White |
| 27 | Wray, Michael | White |
| 28 | Langdon, James | White |
| 29 | Hall, Larry | Black |
| 30 | Luebke, Paul | White |
| 31 | Michaux, Henry | Black |
| 32 | Crawford, James | White |
| 33 | Blue, Dan* | Black |
| 34 | Martin, Grier | White |
| 35 | Weiss, Jennifer | White |
| 36 | Dollar, Nelson | White |
| 37 | Stam, Paul | White |
| 38 | Ross, Deborah | White |

| | | |
|---|---|---|
| 39 | Coleman, Linda | Black |
| 40 | Avila, Marilyn | White |
| 41 | Harrell, Ty | Black |
| 42 | Lucas, Marvin | Black |
| 43 | Floyd, Elmer | Black |
| 44 | Dickson, Margaret | White |
| 45 | Glazier, Rick | White |
| 46 | Yongue, Douglas | White |
| 47 | Sutton, Ronnie | American India |
| 48 | Pierce, Garland | Black |
| 49 | Allen, Lucy | White |
| 50 | Faison, Bill | White |
| 51 | Love, Jimmy | White |
| 52 | Boles, James | White |
| 53 | Lewis, David | White |
| 54 | Hackney, Joe | White |
| 55 | Wilkins, W.A. (Winkle) | White |
| 56 | Insko, Verla | White |
| 57 | Harrison, Pricey | White |
| 58 | Adams, Alma | Black |
| 59 | Jeffus, Maggie | White |
| 60 | Jones, Earl | Black |
| 61 | Wiley, Laura | White |
| 62 | Blust, John | White |
| 63 | Bordsen, Alice | White |
| 64 | Allred, Cary | White |
| 65 | Cole, Nelson | White |
| 66 | Goodwin, Melanie | White |
| 67 | Burr, Justin | White |
| 68 | Blackwood, Curtis | White |
| 69 | Gibson, Pryor | White |
| 70 | Hurley, Pat | White |
| 71 | Womble, Larry | White |
| 72 | Parmon, Earline | White |
| 73 | Brown, Larry | White |

| | | |
|---|---|---|
| 74 | Folwell, Dale | Black |
| 75 | McGee, Wm. C. (Bill) | Black |
| 76 | Steen, Fred | White |
| 77 | Coates, Lorene | White |
| 78 | Brubaker, Harold | White |
| 79 | Howard, Julia | White |
| 80 | Dockham, Jerry | White |
| 81 | Holliman, Hugh | White |
| 82 | Barnhart, Jeff | White |
| 83 | Johnson, Linda | White |
| 84 | Frye, Phillip | White |
| 85 | Gillespie, Mitch | White |
| 86 | Blackwell, Hugh | White |
| 87 | Starnes, Edgar | White |
| 88 | Warren, Ray | White |
| 89 | Setzer, Mitchell | White |
| 90 | Stevens, Sarah | White |
| 91 | Holloway, Bryan | White |
| 92 | McCormick, Darrell | White |
| 93 | Tarleton, Cullie | White |
| 94 | Randleman, Shirley | White |
| 95 | Mills, Grey | White |
| 96 | Hilton, Mark | White |
| 97 | Rhyne, Johnathan | White |
| 98 | Tillis, Thom | White |
| 99 | Mackey, Nick | White |
| 100 | Cotham, Tricia* | White |
| 101 | Earle, Beverly | Black |
| 102 | Carney, Becky | White |
| 103 | Gulley, Jim | White |
| 104 | Samuelson, Ruth | White |
| 105 | Killian, Ric | White |
| 106 | Alexander, Martha | White |
| 107 | Alexander, Kelly* | Black |
| 108 | Neumann, Wil | White |

| | | |
|---|---|---|
| 109 | Current, William | White |
| 110 | Burris-Floyd, Pearl | Black |
| 111 | Moore, Tim | White |
| 112 | England, Bob | White |
| 113 | Guice, W. David | White |
| 114 | Fisher, Susan | White |
| 115 | Goforth, Bruce | White |
| 116 | Thomas, Charles | White |
| 117 | Justus, Carolyn | White |
| 118 | Rapp, Ray | White |
| 119 | Haire, R. Phillip | White |
| 120 | West, Roger | White |

2010 General Election

| District | Winner | Race |
|---|---|---|
| 1 | Owens, W.C. (Bill) | White |
| 2 | Spear, Timothy | White |
| 3 | Sanderson, Norman | White |
| 4 | Dixon, Jimmy | White |
| 5 | Mobley, Annie | Black |
| 6 | Cook, Bill | White |
| 7 | Bryant, Angela | Black |
| 8 | Warren, Edith | White |
| 9 | McLawhorn, Marian | White |
| 10 | La Roque, Stephen | White |
| 11 | Sager, Elton | White |
| 12 | Wainwright, William | Black |
| 13 | McElraft, Pat | White |
| 14 | Cleveland, George | White |
| 15 | Shepard, Phil | White |
| 16 | Justice, Carolyn H. | White |
| 17 | Iler, Frank* | White |
| 18 | Hamilton, Susi | White |

| | | |
|---|---|---|
| 19 | McComas, Daniel | White/Hispanic |
| 20 | Hill, Dewey | White |
| 21 | Bell, Larry | Black |
| 22 | Brisson, William | White |
| 23 | Tolson, Joe | White |
| 24 | Farmer-Butterfield, Jean | Black |
| 25 | Collins, Jeff | White |
| 26 | Daughtry, N. Leo | White |
| 27 | Wray, Michael | White |
| 28 | Langdon, James | White |
| 29 | Halt, Larry | Black |
| 30 | Luebke, Paul | White |
| 31 | Michaux, Henry | Black |
| 32 | Crawford, James | White |
| 33 | Gill, Rosa | Black |
| 34 | Martin, Grier | White |
| 35 | Weiss, Jennifer | White |
| 36 | Dollar, Nelson | White |
| 37 | Stam, Paul | White |
| 38 | Ross, Deborah | White |
| 39 | Jackson, Darren* | White |
| 40 | Avila, Marilyn | White |
| 41 | Murry, Tom | White |
| 42 | Lucas, Marvin | Black |
| 43 | Floyd, Elmer | Black |
| 44 | Parfitt, Diane* | White |
| 45 | Glazier, Rick | White |
| 46 | Pridgen, G.L. | White |
| 47 | Graham, Charles | American Indian |
| 48 | Pierce, Garland | Black |
| 49 | Bradley, Glen | White |
| 50 | Faison, Bill | White |
| 51 | Stone, Mike | White |

| | | |
|---|---|---|
| 52 | Boles, James | White |
| 53 | Lewis, David | White |
| 54 | Hackney, Joe | White |
| 55 | Wilkins, W.A. (Winkie) | White |
| 56 | Insko, Verla | White |
| 57 | Harrison, Pricey | White |
| 58 | Adams, Alma | Black |
| 59 | Jeffus, Maggie | White |
| 60 | Brandon, Marcus | Black |
| 61 | Faircloth, John | White |
| 62 | Blust, John | White |
| 63 | Bordsen, Alice | White |
| 64 | Ingle, Dan* | White |
| 65 | Jones, Bert | White |
| 66 | Goodman, Ken | White |
| 67 | Burr, Justin | White |
| 68 | Horn, D. Craig | White |
| 69 | Gibson, Pryor | White |
| 70 | Hurley, Pat | White |
| 71 | Womble, Larry | Black |
| 72 | Parmon, Earline | Black |
| 73 | Brown, Larry | White |
| 74 | Folwell, Dale | White |
| 75 | McGee, Wm. C. (Bill) | White |
| 76 | Steen, Fred | White |
| 77 | Warren, Harry | White |
| 78 | Brubaker, Harold | White |
| 79 | Howard, Julia | White |
| 80 | Dockham, Jerry | White |
| 81 | Brown, Rayne | White |
| 82 | Barnhart, Jeff | White |
| 83 | Johnson, Linda | White |
| 84 | Frye, Phillip | White |
| 85 | Gillespie, Mitch | White |
| 86 | Blackwell, Hugh | White |

| | | |
|---|---|---|
| 87 | Starnes, Edgar | White |
| 88 | Hollo, Mark | White |
| 89 | Setzer, Mitchell | White |
| 90 | Stevens, Sarah | White |
| 91 | Holloway, Bryan | White |
| 92 | McCormick, Darrell | White |
| 93 | Jordan, Jonathan | White |
| 94 | Randleman, Shirley | White |
| 95 | Mills, Grey | White |
| 96 | Hilton, Mark | White |
| 97 | Rhyne, Johnathan | White |
| 98 | Tillis, Thom | White |
| 99 | Moore, Rodney | Black |
| 100 | Cotham, Tricia | White |
| 101 | Earle, Beverly | Black |
| 102 | Carney, Becky | White |
| 103 | Brawley, William | White |
| 104 | Samuelson, Ruth | White |
| 105 | Killian, Ric | White |
| 106 | Alexander, Martha | White |
| 107 | Alexander, Kelly | Black |
| 108 | Torbett, John | White |
| 109 | Current, William | White |
| 110 | Hastings, Kelly | White |
| 111 | Moore, Tim | White |
| 112 | Hager, Mike | White |
| 113 | Guice, W. David | White |
| 114 | Fisher, Susan | White |
| 115 | Keever, Patsy | White |
| 116 | Moffitt, Tim | White |
| 117 | McGrady, Chuck | White |
| 118 | Rapp, Ray | White |
| 119 | Haire, R. Phillip | White |
| 120 | West, Roger | White |

2012 General Election

| District | Winner | Race |
|---|---|---|
| 1 | Steinburg, Boo | White |
| 2 | Wilkins, W.A. (Winkle) | White |
| 3 | Speciele, Michael | White |
| 4 | Dixon, Jimmy | White |
| 5 | Mobley, Annie | Black |
| 6 | Tine, Paul | White |
| 7 | Bryant, Angela | Black |
| 8 | Martin, Susan | White |
| 9 | Brown, Brian | White |
| 10 | Bell, John R. IV | White |
| 11 | Hall, Duane | White |
| 12 | Graham, George | Black |
| 13 | McElraft, Pat | White |
| 14 | Cleveland, George | White |
| 15 | Shepard, Phil | White |
| 16 | Millis, Chris | White |
| 17 | Iler, Frank | White |
| 18 | Hamilton, Susi | White |
| 19 | Davis, Ted* | White |
| 20 | Catlin, Rick | White |
| 21 | Bell, Larry | Black |
| 22 | Brisson, William | White |
| 23 | Tolson, Joe | White |
| 24 | Farmer-Butterfield, Jean | Black |
| 25 | Collins, Jeff | White |
| 26 | Daughtry, N. Leo | White |
| 27 | Wray, Michael | White |
| 28 | Langdon, James | White |
| 29 | Hall, Larry | Black |

| | | |
|---|---|---|
| 30 | Luebke, Paul | White |
| 31 | Michaux, Henry | Black |
| 32 | Baskervilte, Nathan | Black |
| 33 | Gill, Rosa | Black |
| 34 | Ross, Deborah | White |
| 35 | Malone, Chris | White |
| 36 | Dollar, Nelson | White |
| 37 | Stam, Paul | White |
| 38 | Holley, Yvonne Lewis | Black |
| 39 | Jackson, Darren | White |
| 40 | Avila, Marilyn | White |
| 41 | Murry, Tom | White |
| 42 | Lucas, Marvin | Black |
| 43 | Floyd, Elmer | Black |
| 44 | Glazier, Rick | White |
| 45 | Szoka, John | White |
| 46 | Waddell, Ken | White |
| 47 | Graham, Charles | American Indian |
| 48 | Pierce, Garland | Black |
| 49 | Fulghum, Jim, M.D. | White |
| 50 | Foushee, Valerie P. | Black |
| 51 | Stone, Mike | White |
| 52 | Boles, James | White |
| 53 | Lewis, David | White |
| 54 | McManus, Deb | Undesignated |
| 55 | Brody, Mark | White |
| 56 | Insko, Verla | White |
| 57 | Harrison, Pricey | White |
| 58 | Adams, Alma | Black |
| 59 | Hardister, Jon | White |
| 60 | Brandon, Marcus | Black |
| 61 | Faircloth, John | White |
| 62 | Blust, John | White |
| 63 | Ross, Stephen M. | White |

| | | |
|---|---|---|
| 64 | Riddell, Dennis | White |
| 65 | Jones, Bert | White |
| 66 | Goodman, Ken* | White |
| 67 | Burr, Justin | White |
| 68 | Horn, D. Craig | White |
| 69 | Arp, Dean | White |
| 70 | Hurley, Pat | White |
| 71 | Terry, Evelyn | Black |
| 72 | Hanes, Edward, Jr. | Black |
| 73 | Hollo, Mark | White |
| 74 | Conrad, Debra | White |
| 75 | Lambeth, Donny | White |
| 76 | Ford, Carl | White |
| 77 | Warren, Harry | White |
| 78 | McNeill, Allen* | White |
| 79 | Howard, Julia | White |
| 80 | Dockham, Jerry | White |
| 81 | Brown, Rayne | White |
| 82 | Pittman, Larry* | White |
| 83 | Johnson, Linda | White |
| 84 | Turner, Rena | White |
| 85 | Gillespie, Mitch | White |
| 86 | Blackwell, Hugh | White |
| 87 | Starnes, Edgar | White |
| 88 | Bryan, Rob | White |
| 89 | Setzer, Mitchell | White |
| 90 | Stevens, Sarah | White |
| 91 | Holloway, Bryan | White |
| 92 | Jeter, Charles | White |
| 93 | Jordan, Jonathan | White |
| 94 | Elmore, Jeffrey | White |
| 95 | Brawley, C. Robert | White |
| 96 | Wells, Andy | White |
| 97 | Saine, Jason* | White |
| 98 | Tillis, Thom | White |

| | | |
|---|---|---|
| 99 | Moore, Rodney | Black |
| 100 | Cotham, Tricia | White |
| 101 | Earle, Beverly | Black |
| 102 | Carney, Becky | White |
| 103 | Brawley, William | White |
| 104 | Samuelson, Ruth | White |
| 105 | Schaffer, Jacqueline Michelle | White |
| 106 | Cunningham, Carla | Black |
| 107 | Alexander, Kelly | Black |
| 108 | Torbett, John | White |
| 109 | Bumgardner, Dana | White |
| 110 | Hastings, Kelly | White |
| 111 | Moore, Tim | White |
| 112 | Hager, Mike | White |
| 113 | Whitmire, Chris | White |
| 114 | Fisher, Susan | White |
| 115 | Ramsey, Nathan | White |
| 116 | Moffitt, Tim | White |
| 117 | McGrady, Chuck | White |
| 118 | Presnell, Michelle D. | White |
| 119 | Queen, Joe Sam | White |
| 120 | West, Roger | White |

North Carolina Senate General Election Winners
2006 General Election

| District | Winner | Race |
|---|---|---|
| 1 | Basnight, Marc | White |
| 2 | Preston, Jean | White |
| 3 | Jenkins, Clark | White |
| 4 | HoHoman, Robert Lee | Black |
| 5 | Kerr, John | White |
| 6 | Brown, Harry | White |
| 7 | Berger, Doug | White |

| | | |
|---|---|---|
| 8 | Soles, R.C. | White |
| 9 | Boseman, Julia | White |
| 10 | Albertson, Charlie | White |
| 11 | Swindell, A.B. | White |
| 12 | Smith, Fred | White |
| 13 | Weinstein, David F. | White |
| 14 | Malone, Vernon | Black |
| 15 | Hunt, Neal | White |
| 16 | Cowell, Janet | White |
| 17 | Stevens, Richard | White |
| 18 | Atwater, Bob | White |
| 19 | Rand, Tony | White |
| 20 | Lucas, Jeanne Hopkins | Black |
| 21 | Shaw, Larry | Black |
| 22 | Blake, Harris | White |
| 23 | Kinnaird, Ellie | White |
| 24 | Foriest, Tony | Black |
| 25 | Purcell, William R. | White |
| 26 | Berger, Philip E. | White |
| 27 | Hagan, Kay | White |
| 28 | Dorsett, Katie | Black |
| 29 | Tillman, Jerry W. | White |
| 30 | East, Dan | White |
| 31 | Brunstetter, Peter S. | White |
| 32 | Garrou, Linda | White |
| 33 | Bingham, Stan | White |
| 34 | Brock, Andrew | White |
| 35 | Goodall, W. Edward, Jr. | White |
| 36 | Hartsell, Fletcher L. Jr. | White |
| 37 | Clodfelter, Daniel G. | White |
| 38 | Dannelly, Charlie Smith | Black |

| | | |
|---|---|---|
| 39 | Pittenger, Robert | White |
| 40 | Graham, Malcolm | Black |
| 41 | Forrester, James | White |
| 42 | Allran, Austin | White |
| 43 | Hoyle, David W. | White |
| 44 | Jacumin, Jim | White |
| 45 | Goss, Steve | White |
| 46 | Dalton, Walter | White |
| 47 | Queen, Joe Sam | White |
| 48 | Apodaca, Tom | White/Hispanic |
| 49 | Nesbitt, Martin | White |
| 50 | Snow, John J. Jr. | White |

2008 General Election

| District | Winner | Race |
|---|---|---|
| 1 | Basnight, Marc | White |
| 2 | Preston, Jean | White |
| 3 | Jenkins, Clark | White |
| 4 | Jones, Ed* | Black |
| 5 | Davis, Donald Gene | Black |
| 6 | Brown, Harry | White |
| 7 | Berger, Doug | White |
| 8 | Soles, R.C. | White |
| 9 | Baseman, Julia | White |
| 10 | Albertson, Charlie | White |
| 11 | Swindell, A.B. | White |
| 12 | Romer, David | White |
| 13 | Weinstein, David F. | White |
| 14 | Malone, Vernon | Black |
| 15 | Hunt, Neal | White |
| 16 | Stein, Josh | White |
| 17 | Stevens, Richard | White |
| 18 | Atwater, Bob | White |
| 19 | Rand, Tony | White |

| | | |
|---|---|---|
| 20 | McKissick, Floyd B. Jr. | Black |
| 21 | Shaw, Larry | Black |
| 22 | Blake, Harris | White |
| 23 | Kinnaird, Ellie | White |
| 24 | Foriest, Tony | Black |
| 25 | Purcell, William R. | White |
| 26 | Berger, Philip E. | White |
| 27 | Vaughan, Donald Ray | White |
| 28 | Dorsett, Katie | Black |
| 29 | Tillman, Jerry W. | White |
| 30 | East, Don | White |
| 31 | Brunstetter, Peter S. | White |
| 32 | Garrou, Linda | White |
| 33 | Bingham, Stan | White |
| 34 | Brock, Andrew | White |
| 35 | Goodall, W. Edward, Jr. | White |
| 36 | Hartsell, Fletcher L. Jr. | White |
| 37 | Clodfelter, Daniel G. | White |
| 38 | Dannelly, Charlie Smith | Black |
| 39 | Rucho, Bob | White |
| 40 | Graham, Malcolm | Black |
| 41 | Forrester, James | White |
| 42 | Allran, Austin | White |
| 43 | Hoyle, David W. | White |
| 44 | Jacumin, Jim | White |
| 45 | Goss, Steve | White |
| 46 | Clary, Debbie A. | White |
| 47 | Queen, Joe Sam | White |
| 48 | Apodaca, Tom | White/Hispanic |
| 49 | Nesbitt, Martin | White |
| 50 | Snow, John J. Jr. | White |

2010 General Election

| District | Winner | Race |
|---|---|---|
| 1 | Basnight, Marc | White |
| 2 | Preston, Jean | White |
| 3 | Jenkins, Clark | White |
| 4 | Jones, Ed | Black |
| 5 | Pate, Loris M. Jr | White |
| 6 | Brown, Harry | White |
| 7 | Berger, Doug | White |
| 8 | Rabon, William Peter | White |
| 9 | Goolsby, Thom | White |
| 10 | Jackson, Brent | White |
| 11 | Newton, E.S. (Buck) | White |
| 12 | Rower, David | White |
| 13 | Walters, Michael P | White |
| 14 | Blue, Daniel T. Jr. | Black |
| 15 | Hunt, Neal | White |
| 16 | Stein, Josh | White |
| 17 | Stevens, Richard | White |
| 18 | Atwater, Bob | White |
| 19 | Meredith, Wesley Alan | White |
| 20 | McKissick, Floyd B. Jr. | Black |
| 21 | Mansfield, Eric L. | Black |
| 22 | Blake, Harris | White |
| 23 | Kinnaird, Ellie | White |
| 24 | Gunn, Rick Jr. | White |
| 25 | Purcell, William R. | White |
| 26 | Berger, Philip E. | White |
| 27 | Vaughan, Donald Ray | White |
| 28 | Robinson, Dr. Gladys A. | Black |
| 29 | Tillman, Jerry W. | White |
| 30 | East, Don | White |

| | | |
|---|---|---|
| 31 | Brunstetter, Peter S. | White |
| 32 | Garrou, Linda | White |
| 33 | Bingham, Stan | White |
| 34 | Brock, Andrew | White |
| 35 | Tucker, Tommy | White |
| 36 | Hartsell, Fletcher L. Jr. | White |
| 37 | Clodfelter, Daniel G. | White |
| 38 | Dannelly, Charlie Smith | Black |
| 39 | Rucho, Bob | White |
| 40 | Graham, Malcolm | Black |
| 41 | Forrester, James | White |
| 42 | Allran, Austin | White |
| 43 | Harrington, Kathy | White |
| 44 | Daniel, Warren T. | White |
| 45 | Soucek, Dan | White |
| 46 | Clary, Debbie A. | White |
| 47 | Hise, Ralph E. Jr. | White |
| 48 | Apodaca, Tom | White/Hispanic |
| 49 | Nesbitt, Martin | White |
| 50 | Davis, Jim | White |

2012 General Election

| District | Winner | Race |
|---|---|---|
| 1 | Cook, Bill | White |
| 2 | Sanderson, Norman | White |
| 3 | Jenkins, Clark | White |
| 4 | Jones, Ed | Black |
| 5 | Davis, Donald Gene | Black |
| 6 | Brown, Harry | White |
| 7 | Pate, Louis M. Jr. | White |
| 8 | Rabon, William Peter | White |
| 9 | Goolsby, Thorn | White |

| | | |
|---|---|---|
| 10 | Jackson, Brent | White |
| 11 | Newton, E.S. (Buck) | White |
| 12 | Rabin, Ronald | White |
| 13 | Walters. Michael P | White |
| 14 | Blue, Daniel T. Jr. | Black |
| 15 | Hunt, Neal | White |
| 16 | Stein, Josh | White |
| 17 | Barringer, Tarnara* | White |
| 18 | Barefoot, Chad | White |
| 19 | Meredith, Wesley Alan | White |
| 20 | McKissick, Floyd B. Jr. | Black |
| 21 | Clark, Robert B. III | BIack |
| 22 | Woodard, Mike | White |
| 23 | Kinnaird, Ellie | White |
| 24 | Gunn, Rick Jr. | White |
| 25 | McLaurin, Gene | White |
| 26 | Berger, Philip E. | White |
| 27 | Wade, Trudy | White |
| 28 | Robinson, Dr. Gladys A. | Black |
| 29 | Tillman, Jerry W. | White |
| 30 | Randleman, Shirley* | White |
| 31 | Brunstetter, Peter S. | White |
| 32 | Parmon, Earline W. | Black |
| 33 | Bingham, Stan | White |
| 34 | Brock, Andrew | White |
| 35 | Tucker, Tommy | White |
| 36 | Hartsell, Fletcher L. Jr. | White |
| 37 | Clodfelter, Daniel G. | White |
| 38 | Ford, Joel | Black |
| 39 | Rucho, Bob | White |
| 40 | Graham, Malcolm | Black |
| 41 | Tarte, Jeff | White |
| 42 | Allran, Austin | White |
| 43 | Harrington, Kathy | White |

| | | |
|---|---|---|
| 44 | Curtis, David | White |
| 45 | Soucek, Dan | White |
| 46 | Daniel, Warren T. | White |
| 47 | Hise, Ralph E. Jr. | White |
| 48 | Apodaca, Tom | White/Hispanic |
| 49 | Nesbitt, Martin | White |
| 50 | Davis, Jim | White |

[1] NORTH CAROLINA GENERAL ASSEMBLY
HOUSE COMMITTEE ON REDISTRICTING

TRANSCRIPT OF THE PROCEEDINGS

In Raleigh, North Carolina Friday,
July 22, 2011, 6:00 p.m.

* * *

[2] REP. DOLLAR: Okay. We'll get started here. Our sergeant-at-arms for this evening, we're pleased to have Garland Shepard, Buck Adams, John Brandon, Larry Elliott, R. L. Carter, and Jesse Hayes.

And with that, we will recognize Chairman Lewis to continue a presentation of the bill. Let me also – I don't think we identified them by name yesterday, but let me also express our appreciation to our staff who has been working with us and working with a number of the members. Kelly Quick; Brad – I can never pronounce your last name; Susan Sitze; Shawn Parker, who's out getting something; Erika Churchill; our committee clerk, Patty Fleming.

Okay. You're sitting there, right? Thank you. Chairman Lewis.

REP. LEWIS: Thank you, Mr. Chairman, and ladies and gentlemen of the committee. I appreciate the chance to be here. I appreciate your attendance and your attention to, this matter. I also, of course, welcome the members of the public who are here.

Yesterday I read into the record, and for the members' consumption, a prepared statement. [3] Much to the delight of the members here, I do not intend to repeat the reading of that statement tonight.

As I have explained yesterday, I think this – the plan that you have before you is a legal plan that will

stand what are surely to be court challenges as it moves forward.

So, Mr. Chairman, to save time – it is a Friday night – I'd like to go ahead and move into the discussion of the bill and to yield to any inquiries.

REP. DOLLAR: Further discussion or amendments? Rep. Hackney.

REP. HACKNEY: I have a number of questions. I'll be happy to, however the chair wants to do it, yield to other members and then come back to me later or whatever.

Let me start out with a question for staff about the number of split precincts in this particular plan versus the number of split precincts in the plan under which we are now running.

REP. DOLLAR: Oh, I'm sorry. Ms. McCraw will respond to that.

MS. MCCRAW: In the Lewis-Dollar-Dockham [4] 2 plan, there are 402 split VTDs. In the 2009-78, the current House plan that is in place, there were 200.

REP. DOLLAR: Further questions?

REP. HACKNEY: I attended the Senate hearing today, and it was explained that a VTD and a precinct are not the same thing, which most of us, I guess, knew. But can you tell us how many precincts are split in each plan?

REP. DOLLAR: Do you have that information?

MS. MCCRAW: Because a VTD is not a precinct, we do not have a precinct layer, so we –there are changes that have been made to precincts in North Carolina since 2008 when the VTDs were frozen. And as a

result, we do not have information about the number of precincts that are split under the proposed plan.

REP. DOLLAR: Let me ask you a clarifying question of staff. Ms. McCraw, if you would respond to this. Is it not the case that the General Assembly passed legislation that basically set those VTDs in place and set up that structure as it – as it is that the – that the General Assembly staff is operating under? Is that not [5] correct?

MS. MCCRAW: That's correct. In 2007, the General Assembly amended one of the statutes regarding the Census Data Program and required that the precinct lines in North Carolina would be frozen as of January 1, 2008, and those units would be transmitted to the Census to be used as voting tabulation district, and then the Census has reported back since this data, using those as a unit of Census geography.

REP. DOLLAR: You have a follow-up question, Rep. Hackney?

REP. HACKNEY: Yes. Would it be possible to request the number of split precincts in the 2009 plan versus Lewis-Dollar-Dockham 2? That information obtainable?

REP. DOLLAR: The staff has indicated that they can work on providing that information.

REP. HACKNEY: And – and then a question for Chairman Lewis. Why is it that we have twice as many voter tabulation districts split in your plan than the one that we're running under right now? And have you calculated the cost for elections officials in North Carolina for – and the cost to people who run in dealing with all [6] these splits?

REP. LEWIS: Rep. Hackney, thank you for that question. The precinct, or VTD concept, is not a concept that is addressed specifically in statute or in any case law that I'm aware of and was not a consideration in the drafting of this plan.

REP. HACKNEY: Follow-up?

REP. DOLLAR: Follow-up.

REP. HACKNEY: So the answer – I – I believe you got a plus or minus five percent to play with in those districts, so that – normally that allows you to reduce the number of precinct or VTD splits. And I guess what you're saying is that was not a consideration and just didn't pay any attention to it; is that right?

REP. LEWIS: It's not a consideration that when we drew this plan, if it was an obvious way to keep a precinct whole in the map drawing process, it just happened to be noticed that we were close to the line anyway, I'm sure that we went ahead and kept it whole. But it was not -¬there was no intentional effort put forward to –to keep them whole.

REP. DOLLAR: Follow-up?

[7] REP. HACKNEY: Mr. Chair, I have several other lines of questions, but I'll yield to someone else so you can go around, if – if that would be your preference.

REP. DOLLAR: I – I appreciate that, Thanks to the gentleman. Rep. Lucas?

REP. LUCAS: Thank you, Mr. Chair. I'd like to begin with a general comment and then a question.

The general comment pertains primarily to the circumstances that exist in the area that I represent. And there are other representatives and senators in the same area.

But the comment is that, for the past six elections, my particular district has had less than 50 percent minority voter participation – registration, I should say, and I've had no problem being elected. So I have a little bit of problem trying to understand the need to increase the percentages in such districts where there – the history tends to show that there has been no problem.

My district is primarily military, and the military has had a long, long history that supersedes the history of the Voting Rights Act in [8] race relation – cosmopolitan, generic race relations. They've done a good – they've come a long way. And I contend that additional members of a certain race into my district tends to undermine and really retrogress that progress that's been made in race relations. And I'm having a real problem trying to understand that.

The question is, would consideration –do you feel that consideration should be given to those VR districts who have demonstrated a history of not needing any additional, I would call them handicaps?

REP. LEWIS: Mr. – Rep. Lucas, thank you for that question. The VRA districts that appear in Lewis-Dollar-Dockham 2 were all drawn at a – at a least a 50 percent plus one, level to foreclose the possibility of any Section 2 lawsuit.

REP. DOLLAR: Rep. Rapp.

REP. RAPP: Thank you, Mr. Chair. And, Rep. Lewis, if I may really pick up on the conversation we were having yesterday about communities of interest, because I did do a little follow-up as a result of that and wanted to see if – if we could bring some clarity to just what communities of interest involved, but more

[9] specifically, how they're reflected, you know, in the map that we – that we have here before us.

And thanks to staff – I – I don't want to take credit for all this research – but thanks to staff, they did point out again that communities of interest, compactness, contiguity, and preservation of counties from the State Supreme Court is – is critical in – in determining maps.

And then it does, as you suggested yesterday, get a little bit fuzzy when it comes to communities of interest and how – how they're defined.

So some of the – some of the criteria that are used – and there is a question in here, Mr. Chair.

REP. DOLLAR: You're doing fine.

REP. RAPP: But I – I just thought preparatory to the statement.

REP. DOLLAR: You're doing fine.

REP. RAPP: Thank you. You know, they –they talk about geography; that is part of what is included in there. They talk about neighborhoods of a city or regions. And – and they say what has a common political interest. But they don't necessarily coincide with boundaries of – of [10] political subdivisions, so that – that is pretty – pretty loose language.

When going through it, however, when I was looking at Alaska, in particular – or excuse me, Alabama, they really get into it in a way that – and – and where I'm – here's where I'm going with this, so it doesn't sound like I'm rambling.

They set down some guidelines of what a community of interest involves. And what I'm wondering about since I asked yesterday was there an A, B, C, D list of

– of, you know, items that you included to define community of interest, if these individual items or collectively altogether were what we – what you used when – when you were determining communities of interest?

And if I may ask, I'll just read the list. You can say yes, no, or whatever your response would be. Is that okay?

REP. DOLLAR: Well, I think the – the method of response obviously would be up to Chairman Lewis. And – and I would, maybe for the sake of this tedium, defer to Chairman Lewis.

Would you like to hear those elements individually or would you like for Rep. Rapp to [11] sort of read them out as a group?

REP. LEWIS: Mr. Chairman, the – I can actually answer what Rep. Rapp is going to ask. I'd be glad for him to read out anything into the record that he feels is important to be there.

I'm not familiar with any law from Alabama which deals with communities of interest, and so any law from the state of Alabama was not considered in drawing of maps for the citizens for North Carolina.

REP. DOLLAR: Do you have a follow-up?

REP. RAPP: Thank you, Mr. Chair. Yeah, I do. And – and – and I appreciate the comment, because I – I don't – I didn't think you were going to Alabama to – to define that.

But what I – but since you have had to use a criteria, one criterion, for the – for the drawing of these maps, that being communities of interest, and when I was asking about what that included yesterday, I wanted to be more specific today in terms of what I was able

to find out are terms that are used or – or concepts that are used to define that, and if you were to use, you know, if you had used those, maybe in one district or all districts. That – that's the point in the [12] question, I guess. Not to be argumentative; it's just to be, you know, clear. So if I may?

REP. DOLLAR: Well, let's do – let's handle it this way. If you've got a list of criteria, why don't you just read the criteria, and then when you finish the recitation, we'll see if Chairman Lewis wishes to respond.

REP. RAPP: Okay. That's fine.

Among the criteria, they talk about racial or ethnic groups. They talk about geography by governments, and we got into some discussion about that as it relates, I think, to towns and cities yesterday. They talk about it in terms of regions. I don't know how this term is interpreted, but they use social as a – as a criteria, one criterion. Cultural, partisan, or historic interests. They also say that county municipal and voting precinct boundaries help to define communities.

So I've – and the one other one that seems to be in most states that I – that I've got in front of me – media markets or common communications links.

REP. DOLLAR: I recognize Chairman Lewis. If you – if you wish to respond.

[13] REP. LEWIS: Thank you, Mr. Chairman. Thank you, Rep. Rapp. I appreciate the work that you've done and the work the staff's done. I'd be happy to work with you. Perhaps that is something that we could codify in the future.

I would say that many of those – in fact, most of those you name were considered. I don't know if they were considered in any particular ranked order. But, yes, I'm sure we considered most of those that you named.

REP. DOLLAR: Follow-up?

REP. RAPP: Follow-up. So are you saying in some cases? In all cases?

REP. LEWIS: Rep. Rapp, what I'm saying is that, in order to draw a legal map, we were required to make sure that the one man, one vote rule was applied to our maps. We were also required to comply with the federal Voting Rights Act. We were then, number three, required to comply with the Stephenson requirements of counties – of county groupings.

And then on down the list, as we discussed yesterday, we were allowed to consider -¬after all those criteria were satisfied, we were allowed to consider communities of interest. And [14] did so when we could.

REP. DOLLAR: Follow-up? Or we move on if you -

REP. RAPP: Well, my – my – yeah. I guess in that list I read, clearly racial communities were listed as – as part of that, so I think when you – you're dealing with the Voting Rights Act, clearly that, you know, qualifies under – under community of interest.

And so I want to be clear in terms of whether any of these other factors were weighted heavily after the Voting Rights Act in – in your decision-making?

REP. LEWIS: Thank you, Rep. Rapp. Mr. Chairman, I don't recall exactly how the seventh priority, which is communities of interest, were used, and I can't answer any more specifically than that.

REP. DOLLAR: Thank you. Rep. Wilkins. REP. WILKINS: Thank you, Mr. Chair. I'm going to go down the – is it on? Is it on now? REP. DOLLAR: And we need you to speak up for the court reporter, if you would.

REP. WILKINS: All right.

REP. DOLLAR: I appreciate that.

[15] REP. WILKINS: I'm going to go down the same road that Rep. Rapp went, but I – not in exactly the same manner.

I asked a question about communities of interest yesterday, and based upon the answer that I received, I – I just withdrew any further questions.

But for the senior chair, what I'd really like to know is, just a yes or no answer: Did the three chairs and the consultants consider communities of interest in drawing these maps?

REP. LEWIS: Yes.

REP. DOLLAR: Follow-up?

REP. WILKINS: Follow-up, please. Yes, sir.

And to look more specifically at my area, is the senior chair aware that Person and Granville are in the same COG?

REP. LEWIS: Did you say in the same pod?

REP. WILKINS: COG. Council of Governments.

REP. LEWIS: Rep. Wilkins, I do not know how the Council of Government divides up the counties. I know that Person and Granville are in the same pod, which is a higher criteria than [16] communities of interest.

REP. WILKINS: Follow-up?

REP. DOLLAR: Follow-up.

REP. WILKINS: Does the senior chair have knowledge that within Region K, most of the region was included in an economic development hub formed a couple of years ago?

REP. LEWIS: No, sir. I'm – and I'm having a hard time following the relevance of this as it applies to redistricting, as the gentleman continues to point out that Person and Granville are linked in various ways and they're linked on this map. I'm having a very hard time following the gentleman's point.

REP. DOLLAR: Do you have a follow-up?

REP. WILKINS: May I follow up, please?

REP. DOLLAR: Proceed.

REP. WILKINS: Then, Rep. Lewis, am I to assume that you do not know that Person was not included in that economic development hub?

REP. LEWIS: Representative, I just answered that I don't have any idea about the economic development hub of which you speak.

REP. DOLLAR: Do you have further follow up?

[17] REP. WILKINS: If I may make a statement?

REP. DOLLAR: Proceed.

REP. WILKINS: The hub was created by this legislature in 2007, a piece of legislation introduced by Rep. Crawford. And I have no further questions.

REP. DOLLAR: Thank you. Rep. Fisher.

REP. FISHER: Thank you, Mr. Chairman and Chairman Lewis. I would like to go back just for a

second to the double-bunking question, since it's one that I'm affected by a little bit.

I – I don't recall exactly your response when I asked about double-bunking, but that you -¬but you did mention something about looking at the proximity with which two incumbents live to one another. And so that made me interested to see just how close I live to the person that I'm double-bunked with, and I live approximately nine and a half miles away from her and she from me.

So that led me to want to revisit this issue again just to see if you were aware that you – your plans, all of your plans, have double-bunking in them?

REP. LEWIS: Yes, ma'am. They're my plans.

[18] REP. FISHER: Follow-up?

REP. DOLLAR: Follow-up.

REP. FISHER: I'm – I'm intrigued by the fact that it's a common element in every map that you drew, and I'm – I'm wondering if you have a view about the practice of pairing incumbents in the – into the same districts?

REP. LEWIS: Yes, ma'am. I think that we have drawn 120 districts that are legal, fair, and competitive. I do not see that the districts belong to the individual who currently holds the seat. And I do think that if double-bunking is done in a malicious way, as it was under Sutton Plan 5, which the Democrats passed in 2002, which double-bunked 17 Republicans and five – excuse me – three Democrats, that someone may have a point to make.

REP. FISHER: Follow-up?

REP. DOLLAR: Follow-up.

REP. FISHER: Thank you, Mr. Chairman. Chairman Lewis, I was not a part of that redistricting plan and didn't take part in it in any way. And so I guess what I want to know is, if besides, you know, harkening back to what was done ten years ago and making that be the reason why [19] it's being done today, I'd like to know if you have any legal basis for double-bunking in this instance?

REP. LEWIS: To the best of my knowledge, there is no statutory or case law that deals with double-bunking. And to the best of my knowledge, I've received no input from you prior to the release of this map nor since the release of this map of how to – how to address the concern.

REP. FISHER: Thank you.

REP. DOLLAR; Rep. Alexander.

REP. ALEXANDER: Thank you, Mr. Chairman. I'm trying to get this mic to act right.

I want to harken back to part of yesterday's discussion. We were talking – Chairman Lewis was talking yesterday about in response to, I forget whose question, consultation with African-American organizations.

As you may or may not know, I'm a former state president of the North Carolina NAACP and had been involved with the organization for a number of years in '91 and in '81. When this body was redistricted, I was a participant with the organization and know that there was input from the community into the process at that time.

[20] The NAACP is one of the few organizations within the African-American community that you can find membership in, in just about every county in the

state. And I noticed in observing some of the public input that you had members of the organization who showed up at a number of sites and seemed to uniformly have concerns about what we would process as "packing."

And this got me to thinking, and I wondered what process are you following in reaching out to the African-American community, beyond the members of – of the committee, in order to ascertain the views of the community in terms of how the districts are to be drawn and at what level of population should appropriately be in the districts. That's question number one

Question number two is that having heard statements at the public hearings, I'm wondering how you are processing what seems to be a fairly uniform concern about packing?

REP. LEWIS: Thank you, Rep. Alexander.

I will be happy to provide you copies of the at least five letters that were mailed to the NAACP asking for input, and would love to provide you with replies, had any been sent. None were [21] sent.

Regarding the testimony at the public hearings, we worked very hard to try to understand the concerns that were expressed. As I have quoted numerous times before this committee, "packing" is a legally defined term, so I would ask you how you define it and what court case or statute you would use that differs from the definition that I've already provided at least three or four times since we've started this committee hearing.

REP. ALEXANDER: Follow-up?

REP. DOLLAR: Respond.

REP. ALEXANDER: I understand what the definition is, but the essence of my question isn't about the definition. It's about how the committee and its leadership is processing the input that I've seen from these public hearings. Because part of this process at the end of the day is that the people who are going to be affected, the citizens, have got to understand what's going on and have to view that the process itself has produced a product that they're comfortable with.

And that's – that's what I'm seeking to understand, is how that is being processed, you know, within the committee decision-making to end [22] up with that – that product?

REP. LEWIS: Thank you for the question, Rep. Alexander. Since you and everyone else I have posed the question of 'what is packing," please give me a legal definition. Since no one will provide that, what the committee is using is the legal definition provided by the Supreme Court, which says that packing is when you place so many – when you place such a large number of minorities into a single district that you are precluded from drawing a second minority district.

So, again, respectfully, if we have not found the court case or the statute or any other legal definition of what packing is, I – I would respectfully ask for you to submit that.

Otherwise, the chair and the committee will proceed – will proceed on the legal, written definition of the word.

REP. DOLLAR: Follow-up?

REP. ALEXANDER: Yes, Mr. Chairman. I -¬I just simply want to say that in observing what citizens have been saying at the hearings, there is obviously a

– a deficit of understanding in the community as to either the legal definition or a misunderstanding as to how this process is going to [23] benefit them as citizens. And that's – that's what I'm trying to get at. I mean, not – not the definition, you know, in the book or definition in the – in a court case.

I'm trying to figure out how we're going to make sure that John Q. Citizen understands, because if I measure what I'm seeing, the average African-American citizen does not understand this process to be producing the result that they're comfortable with.

REP. LEWIS: Rep. Alexander, I hope they will appreciate the fact that the committee has followed the law and has complied with the law and the legal definition therein.

I cannot speak to the ways in which we may better educate the general public that this issue has been litigated and clearly defined, and despite intent – attempts that are being made to incite and confuse and frustrate the issue and scare people, still no one, not even in this exchange – and I have a great deal of respect for you; I'm aware of your tremendous background, your family's background in advancing civil rights for all – but even you, today, can't or won't provide me with a legal definition of how these districts [24] pack blacks. And, sir, I would submit to you the reason that you don't is that you can't, because it doesn't.

REP. HACKNEY: Mr. Chairman, may I follow up on that point?

REP. DOLLAR: If you'll hold for just a – just a moment, because your name is next on the list, and we'll get to you.

REP. HACKNEY: That was on the point –that very point, and I hope you'll let me come back to it.

REP. DOLLAR: We'll come back to that. I would just point out another aspect of what was asked. There was – there is a contact list, I believe it's well over 300 individual and groups and leaders in the minority community that has been utilized to send information out and to request information back. And it's my understanding that's a very similar list that was – has been utilized in – in the past to – to try to facilitate the dialogue for communities in the – in the process. Rep. Hackney?

REP. HACKNEY: Rep. Lewis, I'm aware and you're aware that cases regarding retrogression by packing have been cited to you over and over again. [25] They've been cited by Professor Joyner from the NCCU Law School. They are Miller against Johnson and Voinovich versus Quilter, both of which clearly set out that, under certain circumstances, the packing of African-Americans into districts can be retrogression. Are you aware that those cases have been cited to you? And if so, why do you keep saying nobody has cited you any cases?

REP. LEWIS: Mr. Chairman, I'd like to request that all of the three cases that the gentleman just referred to, along with a summary, be produced as quickly as possible and be passed out. I do not believe the gentleman's information is – is accurate. Perhaps, if it is read, then we will at least know which one of us is wrong.

REP. HACKNEY: Well, it -

REP. DOLLAR: I will instruct the staff to so work on those and -

REP. HACKNEY: Did -

REP. DOLLAR: – copies of those cases for the committee members.

REP. HACKNEY: Can I follow up?

REP. DOLLAR: Follow-up.

REP. HACKNEY: The – did you – are you indicating that the committee or the people who [26] draw the maps from the chair were not aware of the principles of Miller against Johnson and Voinovich versus Quilter? Would that be the case?

REP. LEWIS: Rep. Hackney, I would – I would reply to that by saying that I do not believe your interpretation of those cases to be correct.

REP. HACKNEY: All right.

REP. DOLLAR: Follow-up?

REP. HACKNEY: May I – may I – I want to go to a different subject. So, Mr. Chairman, you decide whether I continue or come back.

REP. DOLLAR: Continue.

REP. HACKNEY: There was talk, Mr. Chairman, this morning in the Senate Committee, which I attended, about a – a study of racially cohesive majority voting behavior in North Carolina. And then, as I understand it, the – the fact that, somewhere in North Carolina, in probably more places than one, there is racially cohesive majority voting behavior was then used to justify treating all of North Carolina as a Section 2 area, and then to go from there to a mandate for a 51 percent African-American percentage.

So my first question – my first question is, was there any localized study with respect to [27] racially

cohesive majority voting behavior in North Carolina, or was it a – simply a statewide study?

REP. LEWIS: Rep. Hackney, the – it's my understanding – and I apologize. I was trying to obtain some clarification when you – when you were asking your question. I hope you will forgive me. Would you repeat what you asked, sir? I do apologize. I missed what you said.

REP. HACKNEY: I probably could state it more clearly, and I'll try to this time.

Let me start out by saying that the – as I think everybody is aware of the main case on Section 2 is the Gingles case, which came out of North Carolina. And, of course, Section 2 applies to the – to the whole United States of America and to all of North Carolina.

But for it to have any application to voting rights and construction of districts, there has to be three findings. And one of th se three findings is a history of racially cohesive majority voting behavior by the majority, sufficient to prevent the election of the minority group's favorite candidates.

So you have to have a showing before Section 2 applies. And my question is, did you do [28] any studies before that are localized in nature to show racially polarized voting, or was there simply, as I understood from the Senate Committee this morning, a statewide RPV study, as they call it?

REP. LEWIS: Thank you for that clarification, Rep. Hackney. The study that was referenced in the Senate this morning – and I apologize for not being able to recall the name of the authors – but the study that was referenced in the Senate this – this morning is the only one that. I am aware of.

REP. DOLLAR: If – if I can interject for a moment. I do understand. I believe it's part of the record, the study by Dr. Brunell, which is a county-by-county study.

REP. HACKNEY: And – may I follow-up? REP. DOLLAR: Follow-up.

REP. HACKNEY: So in areas like Forsyth and Mecklenburg, which are not on the vote –Section 5 of the Voting Rights Act, they're not VRA counties, there would have to be a – such a finding before you could apply Section 2 principles, remedial principles, to those counties? Is – am I accurate in your understanding of that?

[29] REP. LEWIS: Rep. Hackney, my answer remains much the same as it has been. In order to foreclose the opportunity for any Section 2 lawsuits, and also for the simplicity of this conversation, we elected to draw the VRA districts at 50 percent plus one, which we feel, based on legal counsel, is the law.

REP. HACKNEY: And -

REP. DOLLAR: Follow-up?

REP. HACKNEY: And you elected to do it also in non-VRA districts, as I understand it, which you characterized as Section 2 districts, even though there has been no finding under the Gingles case. Is it – would that be accurate also?

REP. LEWIS: I apologize, Rep. Hackney. I don't – I don't follow what you're asking.

REP. HACKNEY: Well, you said you -¬you – you contend it's the law that every VRA district has to be 51 – 50 plus – 50 percent plus one. And you've said that in yesterday, so – so it's straight on the record.

And my question is, the districts like the ones in Mecklenburg and Forsyth, where – which are not VRA districts, not Section 5 districts, you [30] contend you could do it there because they might be Section 2 districts. Is that accurate?

REP. LEWIS: Rep. Hackney, my remarks on this issue honestly exhaust as much information as I can provide to you. All of – every district, these 120 that you have before you, have been drawn to the very best of our ability to comply with the law.

REP. DOLLAR: Rep. Daughtry.

REP. DAUGHTRY: Thank you, Mr, Chairman. I was wondering if – is it not true that the bill before us is what we're taking up, and is there going to be time when we discuss this bill and vote on it?

REP. DOLLAR: Yes. And I do believe we are in, Rep. Daughtry, in the process of discussing this bill. Rep. Lucas?

REP. LUCAS: Thank you, Mr. Chair. I was negligent in not generating a follow-up to the response of the previous question that I raised early on. The response that I received, and this is not necessarily directed at Rep. Lewis; it's directed at anyone who possibly may be able to generate a response.

But the response received was that we're [31] trying to prevent lawsuits. I'm understanding that communication has gone out to over 300 individuals and organizations within the minority community, and I'm sure that there has been dialogue on some of those.

The question that I have is, among those responses, has anyone indicated dissatisfaction with the current percentages in the VR counties? And if so, are you

aware of any complaints or any potential plaintiffs in a lawsuit?

REP. LEWIS: Thank you for that question, Rep. Lucas. Unfortunately, I think there are plaintiffs aplenty in this state who are looking for an opportunity to challenge these fair and legal maps once they're adopted. And North Carolina, as you know, has a long history of litigating redistricting matters, and we have tried to preclude and foreclose every door that we can that can be used to attack maps that are fair.

REP. DOLLAR: Further questions from the committee? Rep. Rapp.

REP. RAPP: Thank you, Mr. Chair. And, again, this is to follow up on conversations we had yesterday in – in the committee. And I was asked yesterday, Rep. Lewis, what – you know, who are [32] some of the drafters and consultants and folks working in the – on the plan. And one of the persons you had identified, and it was a name that, frankly, didn't mean anything to me until I begin reading the news today. It was a Thomas Hofeller. Is that – is that how you pronounce his name? Can you spend a little time with us and talk about how much input, how influential he was in that? I have some follow-up questions as well.

REP. LEWIS: Tom Hofeller is a well-known and respected map drawer. And I really don't have anything else to add.

REP. RAPP: Would – follow-up?

REP. DOLLAR: Follow-up.

REP. RAPP: Yep. Thank you, Mr. Chair. Is – is Mr. Hofeller is being paid - excuse me. Is he being paid by

the Republican Party? Is he paying – being paid by taxpayer money?

REP. LEWIS: Rep. Rapp, I assume that he is being paid with taxpayer money through the attorney-client relationship that we have established and discussed yesterday, which is modeled upon the attorney-client relationship created in 1991 by Speaker Dan Blue.

[33] I can speak that the $60,000 appropriated to the Legislative Black Caucus to produce maps to be viewed is, and was, paid by the taxpayers and that there have been no maps produced.

There are other names have been floating around. I would hate to speculate on them.

REP. RAPP: Follow-up?

REP. DOLLAR: Follow-up, yes.

REP. RAPP: Well, my – is it – with our – since – since Mr. Hofeller has had input into this map, is it – will he be at all appearing before this committee or will he be here to be available to the General Assembly next week?

REP. LEWIS: Rep. Rapp, Mr. Hofeller was retained and employed by the outside counsel and is not an employee of the General Assembly, and the short answer is no.

REP. DOLLAR: Follow-up?

REP. RAPP: Follow-up. Now, let me be clear. The pay for this individual is coming from the General Assembly; is that correct?

REP. LEWIS: Rep. Rapp, there are no checks to my knowledge that have been issued to Mr. Hofeller from the General Assembly. As I have explained, he was

retained by the counsel that has [34] been retained by the leadership.

So, yes, in terms of every dollar that the General Assembly spends is, in fact, taxpayer money. And I wish we were a little more cognizant of that in some of the things that are proposed and brought up in these chambers. But he is not an employee and, no, he will not be here.

REP. DOLLAR: In the spirit of Rep. Daughtry's question a moment ago, are there any amendments that members are wishing to offer here in committee that you would like to offer at this time? Seeing no – seeing none at the – I would recognize Rep. Hackney.

REP. HACKNEY: Rep. Lewis, I'd like to go back to your answer about the Brunell racially polarized voting study. Those who have looked at it tell me that it is not at all a county-by-county study where racially polarized voting was done -¬analyzed, say, in Durham County or Mecklenburg County, but actually it was done – analyzed on a statewide basis. Do you wish to amend your answer on that?

REP. LEWIS: Rep. Hackney, I would – to the best of my knowledge, that was actually Chairman Dollar who spoke to that point. But, no, [35] I don't think there's any need. The people that have – as your people have reviewed it for you, mine have reviewed it for me, and I'm content with – with – with my reply.

REP. HACKNEY: Can I follow up, Mr. Chair?

REP. DOLLAR: Well, let me also just note. It's my understanding or my recollection that you folks are the attorneys, not me, but there was a Section 2 liability finding for Wake, Mecklenburg, and Forsyth

Counties in the Gingles case, and of course, that case has not been overturned. Follow-up.

REP. HACKNEY: Well, then, of course, the finding was decades ago, so it has no relevance to – to this.

But my – my question is this, did the Brunell RPV study provide any specific recommendations to develop 50 percent – 50 percent districts statewide? In other words, was that contained in the study?

REP. LEWIS: My response to that, Rep. Hackney, is that I don't know, but it is irrelevant, as that is our understanding of the law as affirmed by the Supreme Court.

[36] REP. DOLLAR: Follow-up.

REP. HACKNEY: And I'd like to return to our discussion about packing. Just – it's my understanding that y'all actually did cite in an earlier – one of – one of your epistles that you read out, the Voinovich case. I'd just like to read a couple of sentences from it.

"The practice challenged here" – this is a quote from the United States Supreme Court. "The practice challenged here, the creation of majority-minority districts, does not invariably minimize or maximize minority voting strength. Instead, it can have either effect or neither. On the one hand, creating majority black districts necessarily leaves fewer black voters, and therefore, diminishes black voter influence in predominantly white districts. On the other hand, the creation of majority black districts can enhance the influence of black voters. Placing black voters in a district in which they constitute a sizeable, and therefore, safe majority, ensures they're able to elect candidates of their choice. Which effect the practice

has, if any at all, depends on entirely on the facts and circumstances of each case."

And my question is, in light of the plain [37] language of the Voinovich case, did you pay any attention to the outcry from the African-American community, practically uniform in the public hearings, against increasing African-American percentage in these districts?

REP. LEWIS: Rep. Hackney, we paid great attention to the law, as it is understood by me, and we have produced 120 fair and legal districts. You have them before you.

Again, the question of packing comes up. I appreciate the cite of the case that you made. I will go back and read the case again. But even in the citation that you made, there is no legal definition provided. We went by the only legal definition that we have.

REP. HACKNEY: And the –

REP. DOLLAR: Follow-up?

REP. HACKNEY: And what – where is that found and located then, just so I can go back and I – I can go back and read also? Maybe we'll come to a uniform conclusion.

REP. LEWIS: Speaker Hackney, I believe – and I apologize, I didn't bring my big notebook tonight. I believe the case in which I'm referring was – it was either Strickland versus [38] Bartlett or Bartlett versus – Bartlett versus Strickland, which was decided by the North Carolina Supreme Court and affirmed by the U.S. Supreme Court.

REP. HACKNEY: And – follow-up?

REP. DOLLAR: Follow-up.

REP. HACKNEY: So that is the only case you are relying on, a Section 2 case, which has nothing to do with the Section 5 Voting Rights Act; is that correct?

REP. LEWIS: No, sir. Actually, I misspoke. I misunderstood exactly what you were asking.

The law – the case that defines packing – please accept my apologies to you and to the committee. The case that defines packing is -¬actually, Representative, rather than belabor this point, I'm going to encourage you to go back and read – to quote your comment, to go back and read the epistles that the chairs released.

REP. HACKNEY: Thank you.

REP. DOLLAR: Further discussion, further debate? Hearing none -

REP. LEWIS: Mr. Chairman -

REP. DOLLAR: – Chairman Lewis, we're [39] available for a motion.

REP. LEWIS: Mr. Chairman, I move the –REP. DOLLAR: Sorry.

REP. LEWIS: Mr. Chairman, I move the Proposed Committee Substitute for House Bill 937 be given a favorable report, unfavorable to the original bill.

REP. DOLLAR: You've heard the motion on the floor for a favorable report for House Bill 937. Any further discussion or debate? Rep. Hackney.

REP. HACKNEY: Debate the motion.

I'd just like to urge members to vote against this motion. These maps that have been prepared are, for reasons that we have detailed, are unfair maps. For reasons that we are detailed – that we have detailed,

they are not legal. For reasons that we have detailed, there are far too many splits. For reasons that we have detailed, there are far too few whole counties. For reasons that we have detailed, there is too much retrogression in African-American influence by virtue of placing African-Americans in higher percentage than they ask for, even after they protested that they did not want them. I urge us [40] to vote against the bill.

REP. DOLLAR: Rep. Bryant, do you want to be recognized?

REP. BRYANT: Thank you, Mr. Chair. just wanted to, for the record, to say that I'm voting against the bill for all the reasons that our minority leader said, and in addition on behalf of my constituents in both Nash and Halifax counties, who believe that the splitting up of District 7 as it has historically been configured with the combination of Nash and Halifax Counties makes us an African-American community worse off.

For reasons that I previously stated and questions that I debated on the Halifax County side, it exposes them to a well-financed and experienced white incumbent that they have to tackle if they wanted an African-American legislator. And in the Nash County side, it pairs us with Franklin County. In both cases, there are significant issues of communities of interest and histories of racial polarized voting that is unique to both Nash and Halifax counties. That is not the case for Northampton or Franklin, which is the pairing that has been recognized. And we disagree that – that all of those factors are superseded by [41] the two-county podding issue. And for that reason, I'll being voting against the motion. Thank you.

REP. DOLLAR: Further discussion, further debate? Rep. Stam.

REP. STAM: I note that it's been 11 years since the Census of 2000, the maps were under now. I hope everyone of us recognizes we can't proceed under the old maps. We have to do something.

And I'll observe two other things. The minority has not offered a single counter-proposal. On the other hand, Rep. Lewis has offered a map that is legal, is fair, and I'm going to vote for it.

REP. DOLLAR: Further discussion, further debate? Hearing none, all those in favor of the motion, say aye.

(Voice vote.)

REP. DOLLAR: Opposed, no.

(Voice vote.)

REP. DOLLAR: The ayes have it. The motion carries, and the committee is adjourned. We will not – having voted the House bill out tonight, we will not be meeting on Saturday. You are – you are relieved of your duty tomorrow.

[42] REP. LEWIS: Ladies and – ladies and gentlemen.

REP. DOLLAR: If you'll be quiet. If -¬if – if we can get order in the – in the committee very briefly.

REP. LEWIS: Ladies and gentlemen, just as explanation and for planning purposes, the House was tasked with the responsibility of passing the House plan. The Senate was tasked with the responsibility of passing the Congressional plan and sending it over to us. Therefore, they will have to meet and officially pass the plan before we can consider it. That is the reason that we will not be able to meet tomorrow to consider

the Congressional Plan, because we are not in possession of it.

Please stay tuned to your e-mails. As soon as the Senate meets to pass the plan, assuming it does pass, we will schedule committee hearings on that plan. Thank you.

REP. DOLLAR: Thank you.

(THE SESSION WAS ADJOURNED AT 7:13 P.M.)

[43] STATE OF NORTH CAROLINA
COUNTY OF CARTERET

CERTIFICATE

I, Patricia D. Thiel, a court reporter and Notary Public, do hereby affirm that the foregoing pages contain a verbatim transcription of the above-captioned proceedings and have been transcribed to the best of my ability and understanding; I further affirm that I am not related to any of the parties to this action; that I am not interested in the outcome of this case; that I am not of counsel nor in the employ of any of the parties to this action.

IN WITNESS WHEREOF, I have hereto set my hand, this the 30th day of July, 2011.

Patricia D. Thiel

[1] IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

Greensboro, North Carolina
October 13, 2015
9:01 a.m.

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Case No. 1:13CV949

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DAVID HARRIS, CHRISTINE BOWSER, AND SAMUEL LOVE,
*Plaintiff,*

vs.

PATRICK MCCRORY, IN HIS CAPACITY AS GOVERNOR OF NORTH CAROLINA, NORTH CAROLINA STATE BOARD OF ELECTIONS, AND JOSHUA HOWARD, IN HIS CAPACITY AS CHAIRMAN OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS,
*Defendants.*

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TRANSCRIPT OF THE BENCH TRIAL VOLUME I of III HELD BEFORE
THE HON. WILLIAM L. OSTEEN, JR.,
UNITED STATES DISTRICT JUDGE
THE HON. MAX O. COGBURN, JR.,
UNITED STATES DISTRICT JUDGE
THE HON. ROGER L. GREGORY,
UNITED STATES DISTRICT JUDGE

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Proceedings reported by stenotype reporter.
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[4] PROCEEDINGS

(At 9:01 a.m., proceedings commenced.)

JUDGE OSTEEN: All right. Good morning, everyone. All the lawyers know who everyone is, but just so that everybody understands, Judge Gregory, being the gentleman that he is, is seated to my right. It will be the only time that I'm seated in the middle of a panel with Judge Gregory seated to my right, and Judge Cogburn is to my left.

So we'll go – we'll calling for trial

Case No. 13CV949, Harris, et al., versus McCrory, et al. So I'll start with the plaintiffs. If you will, just state for the record who is seated at counsel table at this point.

MR. HAMILTON: Good morning, Your Honor. Kevin Hamilton for the plaintiffs. With me today is he Eddy Speas to my immediate right, and to his right John O'Hale representing the plaintiffs.

JUDGE OSTEEN: All right. And the plaintiffs are ready to proceed?

MR. HAMILTON: We are, Your Honor.

JUDGE OSTEEN: All right. Mr. Farr?

MR. FARR: Thank you very much, Your Honor. We appreciate you being here today. My name is Tom Farr. I'm from the Raleigh office of Ogletree Deakins. With me is Alex Peters. He's from the North Carolina Attorney General's Office. Next to Mr. Peters is Phil Strach, who is my law [5] partner at Ogletree Deakins, and at the far end of the table is our ace, super duper paralegal Philen Alexander who we've stolen from the Charlotte office and made him be here today even though he has more interesting things and more pleasurable things to do in Charlotte.

JUDGE OSTEEN: All right. Well, welcome everyone. And defendants are ready to proceed, Mr. Farr?

MR. FARR: Yes, we are, Your Honor.

JUDGE OSTEEN: All right. Well, we will proceed ahead with this hearing. Yesterday, the parties filed a stipulation. I think all of us have seen that and reviewed that. As I indicated at this point in time, we are denying the motion to stay without prejudice.

We have two motions in limine that are pending. We will address those briefly further once we get to that expert testimony, and at this point I anticipate that we will be – whether you want to call it denying the motion in limine without prejudice or reserving

judgment on it, we will probably go ahead and hear the testimony in its entirety subject to whatever objections remain. We'll discuss that further when the experts are called.

Will either one of those experts be called today, do you think, Mr. Hamilton?

MR. HAMILTON: It's possible that Dr. Ansolabehere might be called by the end of the day. It's possible.

[6] JUDGE OSTEEN: Okay. Well, we'll see how we get along. Once you get ready to call one of those experts, we'll talk about procedures related to that at that particular time.

All right. The parties may proceed with their opening statements. The plaintiff is recognized. Mr. Hamilton?

MR. HAMILTON: Thank you, Your Honors. And for the record, it's Kevin Hamilton again. I appear on behalf of the plaintiffs in this litigation, David Harris and Christine Bowser.

The Equal Protection Clause of the Fourteenth Amendment forbids race-based redistricting absent a compelling state interest, and even then only when narrowly tailored to meet that state interest. The evidence will show that in 2011 the North Carolina General Assembly used race as the predominant factor in drawing North Carolina's 1st and 12th Congressional District, had no compelling state interest for doing so, and in all events failed to narrowly tailor those districts to that state interest.

The evidence will show that the General Assembly manipulated these districts by moving voters in and out of the districts based on the color of their skin. With respect to CD 1, the 1st Congressional District,

racial predominance is really not in serious dispute. The General Assembly increased the number of African-Americans in the district with the [7] express goal of creating a majority-black district, what they called a Voting Rights Act District, all on the theory that doing so is somehow required by the Voting Rights Act. There's no dispute what was going on here. The defendants baldly admit their purpose was to increase the black voting-age population to 50 percent plus one or higher.

With respect to the 12th Congressional District, the General Assembly drew the district to include the heavily African-American population of Guilford County on the theory that doing so was required by Section 5 to prevent retrogression. Again, this was hardly a secret. The legislators explained that they drew the proposed 12th Congressional District, and I quote, At a black voting-age level that is above the percentage of black voting-age population found in the current district to ensure preclearance, closed quote, under Section 5 of the Voting Rights Act. That's Plaintiff's Exhibit 68.

The evidence plaintiffs will put before the Court come from the mouths of the defendants themselves, their emails, their statements on the floor of the General Assembly, their documents.

In addition, plaintiffs will call several witnesses. First this morning, Senator Dan Blue, a member of the General Assembly, who observed firsthand the enactment of this flawed plan, will testify. The current incumbents in both of these [8] two districts, Representative Watt and Representative Butterfield, will testify. Both of them opposed the plan as did the entire Black Caucus in the General Assembly, and both of them informed the defendants that the plan

was legally flawed and unnecessary as a practical matter.

And we will present two expert witnesses. The first is Dr. David Peterson, and the second is Dr. Steven Ansolabehere. Dr. Peterson analyzed precincts on the borders of these districts in the *Cromartie* litigation in 2000 here in North Carolina, and the Supreme Court specifically discussed and relied on his analysis in its decision in that case in finding that race did not predominate in the construction of the districts at that time. Dr. Peterson will repeat his analysis here but reaches the opposite conclusion using the same methodology, but different data. And then finally, Dr. Ansolabehere will testify using several different analyses that race predominated in the drawing of these districts.

Together, the evidence will show that race, not politics, was the predominant purpose of this redistricting plan from start to finish and that neither district was narrowly tailored to achieve a compelling state interest, and, as a result, the plans necessarily fail constitutional muster and must be invalidated.

Now, I know the Court has already had the benefit of the parties' briefing in the trial brief before the proceeding [9] got started, so rather than repeat or do a dramatic recitation of the trial brief that you've already read, I thought I would just emphasize a couple of – a handful of key facts that we believe will be clear from the record and will be established during the course of the trial.

First, the evidence will show that the incumbent representatives in the 1st and 12th Congressional Districts were safe in winning re-election by large margins of victory. In the jury box, we've blown up the table showing the election results and the black

voting-age population. We'll also be showing that on the screen during the course of the trial showing the black voting-age population and then the election results, the winning margin.

Congressional District 1 was first drawn in its present configuration in 1992. Between 1997 and 2001, the black voting-age population fell below 50 percent. It has remained below 50 percent since that time until – all the way up until this redistricting exercise. CD 12 is similar. From 1997 to 2011 it had a black voting-age population well below 50 percent.

Yet, despite the fact that neither district was a majority African-American district, African-American candidates of choice easily and consistently won re-election in an unbroken string of clear and overwhelming electoral victories. How did that happen? It happened because white voters crossed [10] over to vote with African-American voters to elect those candidates. It's simple now. That's what happened. And that's a terrific result, and that's one we should all be proud of and applaud.

But rather than applaud this post racial success in these two districts where white and black voters united to elect candidates of choice, the North Carolina General Assembly chose instead to dismantle both districts and to sort voters by the color of their skin packing black voters into CD 1 and CD 12 and astonishingly now stand before this Court and assert that the Voting Rights Act, of all things, somehow required dismantling these two districts sorting voters by race and creating black and white electoral districts. To put it delicately, that's a decidedly odd reading of the Voting Rights Act of 1965.

Second, the record will demonstrate that neither district has been challenged under the Voting Rights

Act at any point in the last 20 years, not once. Both districts have been consistently precleared pursuant to Section 5 of the Voting Rights Act, and neither has been the subject of a lawsuit under Section 2. In fact, the evidence will show there's been no state-wide redistricting Section 2 lawsuit filed in over three decades in this state, and for good reason. As the historical record vividly demonstrates, white and blacks in these districts have voted for the same candidate in numbers [11] sufficient to elect the African-American candidate of choice.

In other words, in the words of *Gingles*, the white majority did not, quote, vote as a bloc to the African-American candidates of choice, closed quote. Precisely the opposite happened. Significant crossover voting supporting African-American preferred candidates occurred. On such a record, there's really no credible argument that baldly increasing the black voting-age population levels of these districts is somehow required to avoid liability.

Third, the evidence will show that the General Assembly used a mechanical 50 percent black voting-age population floor in drawing these two districts. The evidence is clear, direct, and undisputed.

With respect to CD 1, defendants baldly admit their goal of achieving a racial threshold of 50 percent black voting-age population. Senator Rucho and Representative Lewis labeled CD 1 a "VRA district" and explicitly instructed Dr. Hofeller to draw the district to increase the black voting-age population to more than 50 percent. The point's critical, and the point is entirely undisputed. Dr. Hofeller will admit it from the stand.

With respect to CD 12, Senator Rucho and Lewis conceded that it was not what they called a "VRA

district," but they pointed to Guilford County, which is a covered jurisdiction under Section 5, or was a covered jurisdiction [12] under Section 5 of the Voting Rights Act, as a reason to ensure that the existing black voting-age populations in the district be maintained or increased. This is plain constitutional error. That score is now settled beyond dispute by the Supreme Court's recent decision last year in the *Alabama* case which flatly condemned the use of such mechanical racial targets and by the recent decision in the United States District Court for the Eastern District of Virginia decided just last year in *Page versus Virginia State Board of Elections* which similarly struck down the use of a 55 percent black voting-age population threshold for Virginia's Third Congressional District.

But even if the direct evidence were not so clear and undisputed, the circumstantial evidence makes clear what's going on. Both districts – and I've blown up easels. Here is CD 1, and there is CD 12 – make a mockery of traditional redistricting principles. Whether measured by split counties or split VTDs or highly irregular shapes, you can take a look what's called the "interocular test" and see that these are unusually shaped districts.

Fourth, although Senator Rucho and Representative Lewis pointed to the Supreme Court's decision in *Strickland versus Bartlett* as requiring at least 50 percent BVAP, that's the explanation, to be clear, that the defendants will offer that *Strickland* somehow required this. The case doesn't say anything of the sort. *Strickland* was a badly splintered [13] Supreme Court decision. The plurality opinion only had three justices sign on to it, and those three justices explicitly recognized that where, as here, there's substantial crossover voting, it is, by definition,

impossible to establish liability under Section 2 because of the absence of racially polarized voting sufficient to defeat the African-American candidate of choice from being elected. How do we know that's not existing here? Those tables are a vivid testament to that, 20 years of African-Americans every year being elected year after year.

The Court went out of its way in *Strickland* to point out the irony if the Voting Rights Act interpreted to entrench racial differences. Here's what they said, quote: Crossover districts are by definition the result of white voters joining forces with minority voters to elect their preferred candidate. The Voting Rights Act was passed to foster this cooperation, closed quote. The statute most assuredly does not require balkanization of voters on the basis of race, particularly where, as here, there is no evidence of racial bloc voting that would deny minority voters the opportunity to elect the candidate of their choice.

Fifth, the evidence will show that 50 percent black voting-age rule predominated over all other criteria, save one man, one vote, one person, one-vote. Defendants apparently intend to present evidence that they considered political factors in drawing these maps, and they may well have done so, [14] but only after satisfying the nonnegotiable goal of creating majority minority districts. It was hardly an accident that both of these districts ended up above 50 percent black voting-age population. That was the whole point of the exercise.

Dr. Hofeller will testify that he considered black voting-age population levels when drawing CD 1, but he will also testify that as to CD 12 he only used the 2008 presidential election results to draw CD 12, and he used those results in order to favor Republicans and disfavor Democrats. But using a racially charged

election involving the first African-American major party candidate for the United States presidency in US history, if you use that as the measuring stick, that hardly shelters what's going on here. The 2008 presidential election results in CD 12 were much more closely coordinated with race than party affiliation as Dr. Ansolabehere will testify.

Sixth, the evidence will show that the defendants cannot identify a compelling state interest to justify the use of race in drawing these districts. Defendants contend that the General Assembly's alleged goal of complying with Section 2 and Section 5 of the Voting Rights Act justified its use of race in drawing these districts, but the only way to survive strict scrutiny since the Supreme Court's decision in *Miller versus Johnson* is to ensure that the plans were actually – is [15] to prove that the plans were actually required by Section 5. But there's no plausible argument here that either Section 2 or Section 5, properly interpreted, required a 50 percent black voting-age population. There's no safe harbor, as the defendants like to say. Both of these districts were already performing for minority preferred candidates with large winning majorities. There was no need to increase those to levels that would be embarrassing to even Eastern European dictators.

The question under Section 5 is whether there's been retrogression, that is, whether the proposed plan would reduce minority voters' effective ability to elect candidates of their choice. It most assuredly does not command a state to match, much less significantly increase, the preexisting level of minority population without regard to the minority communities' actual ability to elect. If that's what the General Assembly thought or was advised, it was just wrong.

If the Supreme Court's decision last year in *Alabama* means anything, it means that this is a district-specific analysis and mechanical, numerical thresholds are forbidden. The burden is on the state to establish that it had a strong basis in evidence – that's the quote – strong basis in evidence for believing that Section 5 required it to draw these districts with this level of black voting-age population; and in the absence of such a showing, the plan necessarily fails [16] the strict scrutiny analysis. Here, the defendants will fail in that showing.

Defendants claim that racially polarized voting exists generally in North Carolina, but that certainly doesn't establish racially polarized voting in these two specific districts; and, as *Alabama* teaches, this is an analysis that is district-specific, not state-wide. That's the whole reason for the reversal in *Alabama*. The analysis there was done on a state-wide level, and the Court reversed and said you can't do it that way. It's done state-wide, done with a flat black voting-age population threshold.

In the absence of such a district-specific analysis, it's simply impossible to have a strong basis in evidence for believing that either Section 2 or Section 5 required increasing the number minority voters to achieve the 50 percent BVAP in these districts, and the evidence will show that the authors of the enacted plan simply declined to conduct such an analysis and chose instead to guess – set a rule of 50 percent and pack black voters into these districts.

That approach, no matter how well-intentioned – and this is not an intent case. We don't have the burden and don't intend to try and show that anyone was motivated by ill-intent here. No matter how well-intentioned, using this approach to draw these districts cannot be considered a strong basis in

evidence for believing that Section 5 required them. Simply [17] invoking the name of the Voting Rights Act without actually conducting an analysis, as required by the statute, cannot inoculate race-based redistricting from constitutional scrutiny.

Seventh, even if the defendants could identify compelling state interest, they can't meet their burden of proving that these districts were narrowly tailored to meet that interest. The Supreme Court long ago declared the reapportionment plan, quote, would not be narrowly tailored to the goal of avoiding retrogression if the state went beyond what was reasonably necessary to avoid retrogression. That's the *Shaw* case from this very state.

But that's exactly the evidence that will be placed before you in this case. Both districts consistently cleared – consistently elected African-American candidates of choice by wide margins. No straight-faced argument can be advanced that either needed to have their black voting-age population increased in order to prevent retrogression. As the Court declared in *Shaw*, covered jurisdictions do not have carte blanche to engage in racial gerrymandering in the name of retrogression. That's exactly what happened here.

Now, before I sit down, let me just mention. There is a parallel state court litigation challenging these districts. It is pending before the North Carolina Supreme Court. The state trial court in that case issued a decision [18] before the US Supreme Court issued the decision in *Alabama*, and, as a result, the Court failed to review these two districts on a district-specific basis and didn't have the teaching of *Alabama* to assist it in resolving the cases, but that's the status of the stated Court litigation.

The Supreme Court emphasized in its *Miller* decision that, quote, the essence of the Equal Protection claim recognized in *Shaw* is that the state used race as a basis for separating voters into districts without any compelling state interest necessitating such race-based redistricting.

The *Strickland* plurality decision as well condemned racial balkanization where minority communities had successfully joined forces with white voters to achieve electoral success, and *Strickland* noted the irony if the shining star of the Civil Rights Act – shining star of the Civil Rights movement were interpreted to actually require separation of voters into districts according to the color of their skin.

The *Shaw* court condemned the redistricting plan there because they, quote, threatened to carry us further from the goal of a political system in which race no longer matters, a goal that the Fourteenth and Fifteenth Amendment embody and to which the nation continues to aspire, closed quote.

So, too, will the evidence condemn the plans before this Court. The evidence will show that the General Assembly [19] used race, not politics, as a predominant factor in drawing these districts and that this constitutionally suspect use of race was neither required by a compelling state interest nor narrowly tailored to further any such interest.

At the conclusion of the trial, the plaintiffs will ask this Court to invalidate these two districts and to implement appropriate, immediate, and effective remedies. Thank you, Your Honors.

JUDGE OSTEEN: All right. Give me just a moment. All right. Mr. Farr, or whoever is ready to proceed for the defense.

MR. FARR: I am, Your Honor. Suffice it to say, Your Honor, that we have strong disagreements with the plaintiffs in the way they've outlined the facts and the applicable law in the case.

What this case is really about, Your Honors, is it's a political case. The legal fees in this case are being paid by something called the National Democratic Voting Rights Trust Fund who are bringing cases like this all across the United States. The reason why this case was brought is because a Democratic General Assembly enacted the 2001 Congressional Plan in a way that favored the Democratic Delegation, and the 2011 General Assembly enacted a plan that favored the Republican Delegation. The only way that the plaintiffs, who we contend are bound by the prior decision in the *Dickson* case, and their [20] counsel in the National Democratic Voting Rights Trust Fund can try to get these plans thrown out is through the legal theories they're alleging in this case which were also litigated in the *Dickson* case.

So we disagree with plaintiffs' counsel. We do not think the evidence will show that race was the predominant motive for either one of these districts. District 12 was drawn based upon political characteristics as it had been done in 1997 and in 2001. The difference between District 12 is that in '97 and 2001, it was drawn by a Democratic legislature to be a strong Democratic district, but enough Democratic votes were shaved out of the district to create strong adjoining Democratic districts such as the former Senate – or Congressional District 13. You'll see a picture of that. It is at least as bizarre looking as any of the other congressional districts that have been drawn in North Carolina. It stretched from Raleigh to Guilford County. It was drawn by the Chairman of the Senate Redistricting Committee, Brad Miller, who

then ran that district and was elected to Congress in that district.

In the Mecklenburg area, Mecklenburg County was added to the 8th Congressional District in the 2001 plan in order to create a stronger Democratic 8th District which ultimately resulted in the defeat of the Republican incumbent in that district, Robin Hayes, by Congressman Kissell. So this case is [21] about politics.

If the Court finds that the 1st District – if you find that the race was the predominant motive in the 1st District, then we believe the evidence will show that there was a compelling governmental interest, that there's a substantial basis in the evidence to support that. I'll go over some of that as I walk through a history of the Congressional Plan, but I'm not really sure how plaintiffs can say that the district – that either the legislature or the Court in *Dickson* did not do a district-by-district analysis.

The legislature had two polarization experts that studied racially polarized voting in all of the counties in which the 1st Congressional District is located, and this now brings me, Your Honors, to a couple map notebooks that are going to be helpful to the Court. I'm not going to hand this one up right now, but Exhibit 22 is the map notebook that the parties provided the three-judge court in the *Dickson* case; and what this notebook has in it, it has all of the so-called benchmark plans, the benchmark plans being the plans that were in place during the 2010 general election. So in the case of the congressional district, it's the 2001 Congressional Plan which is also known as the zero deviation plan. It has the 2003 Senate plan, and it has the 2009 House plan.

The House plan was amended in 2009 because of the case which we've cited to the Court called *Strickland v.* [22] *Bartlett*, and we do think that a case says that if you're going to draw a VRA district, a Section 2 district, the black voting-age population needs to be above 50 percent. That is how the state interpreted that case, and I know that one of the dissenting judges in *Strickland* interpreted that case as stating that the legislature should create VRA districts that are above 50 percent.

So what else is in this notebook, Your Honors, are all of the alternative proposed maps for the Congress, for the House, for the Senate, and included in this notebook is what we call the "stat pack" which has got all of the census categories in it. It has election results for all the districts. This will make more sense to you when you actually see the notebook.

But a point that's very important, Your Honor, is that this notebook is based upon the 2010 Census; and, during the course of this case, you'll discover that there's two different categories to measure black population. There's a category called "single-race black population," and there's a category that the Census Bureau calls "any part black population." "Any part black population" is where the person reports themselves as being black and some other race in addition to being black.

So those are two different categories. That's important to understand because when we go to the charts that the plaintiffs have over here, and we'll point this out when we [23] get a chance, they talk about the black population in these districts, the black voting-age population. I've looked at these charts just before we started today, and the black voting-age population they list for the 2011 1st and 12th Districts is from the 2010 Census, and it's the any part black

voting-age population. That term "any part black voting-age population" is defined in this notebook with the phrase "total black population." So it's called "total black voting-age population" in this notebook. The Census calls it "any part black population."

So for the black voting-age population, they've listed in their charts for the 2010 1st and 12th Districts – they've used the 2010 Census "any part black." For the population that they've listed for the 2001 Congressional Districts, they've used "single-race black," and they've used the 2000 Census. So they're comparing apples to oranges in two different ways. Just as a minor fact, Your Honor, if we're going to look at single-race black population, the 12th District was not drawn over 50 percent. It's slightly below 50 percent.

So that's the importance of this notebook. Now, there's another notebook I would like to hand up to the Court if I might.

JUDGE OSTEEN: Now?

MR. FARR: Yes, because it's part of my opening [24] statement.

JUDGE OSTEEN: Okay.

MR. FARR: And I think it will help the Court. This is Exhibit 126, Your Honor, and this is important to review this with the Court now to give the Court the historical perspective, and I've got extras if the law clerks would like one.

JUDGE OSTEEN: All right. Keep it to an overview, Mr. Farr.

MR. FARR: What's that?

JUDGE OSTEEN: Keep it to an overview if you can.

MR. FARR: I will, Your Honor.

I just want to flip through the tabs in this quickly, Your Honor. Tab 1 is the original version of the 1st District that was enacted in 1991. It was precleared by the Justice Department, and the Justice Department objected to the failure of the state to create a second majority-black – or majority minority district running from Charlotte to basically Wilmington.

And it's important, Your Honor, that you understand some terms for voting rights districts. A majority-black district is where the black population is in the majority. A coalition district is where whites are in the minority, there is no majority white population, and blacks and, say, Hispanics create the majority. Then there's something called a crossover [25] district. That's where whites are actually in the majority.

Counsel for the plaintiff referred to the 1st District as a crossover district in his opening argument. That's not correct. In none of these plans from '91 through the present, the 1st District has never been a white crossover district. Whites have never been in the majority in that district. It originally started off as a majority-black district in population and voting-age, and then I believe by the time of the '97 Plan, the 1st District was a majority-black in population and a plurality voting age. So make sure you understand those terms. There's never been a majority-white population in the 1st District that could vote as a black to defeat the candidate of choice of the African-American population.

So going through this notebook quickly, Your Honor, under Tab 2 is the '92 Congressional Plan. This was the plan that was the subject of the litigation in the *Shaw* case. The 12th District – it's hard to read on this, but basically it stretched from Gastonia to Durham along the interstate highways. The 1st District was in

Eastern North Carolina. There was never a ruling in *Shaw* on the 1st District. There was no plaintiff withstanding to challenge the 1st District, so the Court in *Shaw* never ruled on the 1st District, but they did declare the 12th District unconstitutional as illegal racial gerrymandering.

[26] So then if you turn to the next tab, Tab 3, Your Honors, this was the plan that the state enacted after *Shaw* in 1997; and as you're looking at these plans, I want you to note we heard from counsel about how horrible this district looked. This district looks no different than any other versions of the 1st District that have ever been enacted. There was historical precedence for this district, and having beautiful appearance was never a criteria that any of the General Assemblies followed. I mean, I really would like to have counsel get up here and explain to me how any of these versions of the 1st District passed the interocular test in a way that's better than the 2011 1st District.

Now, the point on the '97 plan, Your Honor, is the court – the district court originally granted summary judgment for the plaintiffs, and in that case the plaintiffs were relying on registration statistics to prove that race was the prominent motive. In the first *Cromartie* case, the Supreme Court reversed and sent it back to trial, and they very strongly indicated that voting patterns were more probative of whether race was a predominant motive in registration statistics, and that's because we have a large number of unaffiliated voters, and also because everyone in this courtroom knows that there's a lot of white Democrats that vote Republican. So registration does not correlate with how people vote. How people vote correlates with how people vote.

[27] So when this was sent back down for trial, the 1st District – which I defy anyone to tell me how this is prettier than the 2011 1st District – this was found to be constitutional and survived the *Shaw* compelling governmental interest test. The Court found that it was compact. The Court found there was racially polarized voting even though it was a majority – a minority-black voting-age population district. I think there was only 46 percent single-race black voting-age population in the 1st District under this plan.

The district court found the 12th District to be illegal, again, based upon expert testimony involving registration statistics. So it went up to the Supreme Court again, and the Supreme Court found that registration statistics do not correlate with the way people vote and that you can't use registration statistics to prove a racial gerrymander. And amazingly, that's exactly what Dr. Ansolabehere – and I apologize if I have not pronounced his name correctly. The main point of his testimony is to use registration statistics to prove that Congressional District 12 is an illegal racial gerrymander after we've had two Supreme Court decisions saying that's not a proper way to prove that case.

Your Honor, Tab 8 – or excuse me – Tab 4 was a plan the General Assembly enacted after they lost in the district court in the first *Cromartie* case. This plan was only used in the 1998 election. It had a much lower black voting-age [28] population, but I think it was still well above 30 percent. If we look at the evidence, we'll see that Congressman Watt, I believe, had his closest election in '98 of all the elections he's had when he was representing this district. When the state won the *Cromartie* case, they reverted back to the '97 plan for Congressional District 12.

The next tab, five, is the Congressional Zero Deviation Plan. This is the 2001 plan. Again, Your Honor, you look at the 1st District. I would like to have someone tell me how that passes the interocular test but the 2011 District doesn't. And what's important to note, Your Honor, is that nobody has ever argued until this case that racially polarized voting does not exist where the First Congressional District has been drawn.

In 2001, the state in its preclearance submission admitted that they were drawing the 1st District as a Section 2 district as they had done from the beginning of this district. There had never been a black congressional representative in North Carolina until the 1st District and 12th District were enacted.

Also, Your Honor, what this case is really about is the *Strickland* case as far as it relates to Congressional District 1. They – on their charts here, Your Honor, they haven't reported the actual black voting-age population for CD 1 under the 2010 Census. If you look at the any party black [29] voting-age population for CD 1 under the 2010 Census, if you look at the 2001 version, it's about 48.65 percent.

So the General Assembly was looking at the *Strickland* case. There's no – there is no dispute in the legislative record that significant – legally significant racially polarized voting exists in this part of North Carolina. One thing these map notebooks will show you, Your Honor, is that all of the proposed legislative maps produced majority-black or coalition districts in the very area where Congressional District 1 was drawn. That was before the General Assembly.

They had two racial polarization experts who studied racial polarization in these counties. A three-judge court in *Dickson* looked at each one of these

districts on an individual basis to make it's findings, and so the whole issue is did the General Assembly violate the law because they drew a district slightly above 50 percent instead of the 48.65 percent district that existed under the 2010 Census?

Now, counsel for the plaintiffs refers to the *Alabama* case, and I want to say something about that briefly. The *Alabama* case was a Section 5 case. *Alabama* drew their districts that there was a legislative Section 5 case. The district that was scrutinized by the Supreme Court had been drawn to be over 70 percent black, and the state justified that by saying, well, we decided that we had to keep districts at this level because that's what they were previously.

[30] Now, there's no Supreme Court case that says that, and the 70 percent district, Your Honor, I would say is quite a bit different than the 52 or 53 percent district which we're talking about here in Congressional District 1, and the state didn't adopt a mechanical rule that they came up with. *Alabama* came up with a mechanical rule that they made up with no Supreme Court basis.

North Carolina followed a rule that had been adopted not only by the United States Supreme Court but also by the North Carolina Supreme Court that if you're going to draw a VRA district, it had to be over 50 percent because one of the *Gingles* elements is there's no racially polarized voting unless the blacks need a majority to defeat the white minority voters who are voting in a bloc.

And so what's interesting is plaintiffs get up here and say there's no racially polarized voting because whites are crossing over in a crossover district, which it wasn't, to vote for the black candidate. Well, if that's true, Your Honor, then why did the plans proposed by

the Legislative Black Caucus and the NAACP and the Democratic leadership – they all produced plans that were 47 to 48 percent black voting-age population. If there's no racially polarized voting anymore, then we don't need this district at all. It can go away. We can draw the district that – 10 percent black population if there's no racially polarized voting.

[31] That's not what the plaintiffs wanted. They want the Court to think that *Strickland* didn't happen, and they want to shave the black population out of these majority-black districts to create a better plan for Democrats because black voters are highly correlated with voting for Democratic candidates.

I also want to point out, Your Honor, that Tab 5 is the Congressional Zero Deviation Plan with the 2000 Census. If you flip through there, you'll see that the reports from the General Assembly did not report the any part black voting-age population. That would be on about page 3. It was the single-race black population that was reported.

And if you go to Tab 6, Your Honor, that's the 2001 Congressional Plan with the 2010 Census. And if you look at all the cases and the guidance from the Justice Department, what the General Assembly was obligated to do was to compare the benchmark plan using the 2010 Census, not the 2000 Census.

Oh, by the way, I do want to point out that we've heard about the percentage of the vote that Congressman Butterfield received, but what the plaintiffs don't want to talk about is what's the actual margin of victory? So this district was under-populated by 97,500 people. Congressman Butterfield had several elections where he won by less than that amount. And so the question is what type of white voters do you have to put back into the district to keep

it at [32] 98 percent? And that's exactly what the Supreme Court said the states were not obligated to do under *Strickland*, that legislatures and courts needed a judicially manageable standard.

So, again, North Carolina didn't make up a mechanical rule like *Alabama* did. They followed the US Supreme Court; and while not binding on you, Your Honors, it is binding on the General Assembly. The North Carolina Supreme Court said the same thing.

The rest of these maps, Your Honor, are proposed maps. There were only two proposed maps from other parties, the Southern Coalition for Social Justice which represented a coalition including the NAACP. That's under Tab 7. You can see their 1st District there in yellow. Someone tell me how that passes the interocular test while the enacted plan doesn't, and they drew that district, I think, with a black voting-age population of 47 to 48 percent. Again if, there's no racial polarized voting, why isn't it at 25 or 28 percent?

They also drew that district, Your Honor, with – so that whites were in the minority. Nobody's ever proposed a 1st Congressional District with a majority-white population. And they also proposed a district with very – nearly a majority of the vote – registered voters being black.

There are several versions of the *Dickson v. Rucho* plan in this notebook, Your Honor. The plan was originally – [33] the 1st District was originally drawn into Wake County because the cochair, Senator Rucho, and Representative Lewis may have misunderstood Congressman Butterfield. For him, I have great respect. But they thought that he had requested that the district be drawn into Wake instead of Durham acknowledging that the severe underpopulation of the

1st District could require something like that, putting it into the RTP area to make up the severe underpopulation.

The ultimate plan enacted by the General Assembly took the district into Durham instead of Wake County. There was historical precedent for that because the very first map we looked at, the '91 Plan, which was precleared by the Justice Department, had drawn the district into Durham. In fact, if you look at the *Shaw II* case, the Supreme Court kind of acknowledges that that district was a proper remedial district. So there was historical precedent for that. There was also a speaker at a public hearing who supported leaving the district into Durham.

But again, Your Honor, what these maps show is that it would be real hard to put these maps on a reality TV show and have some judges decide which one of these maps is prettier and then explain why, or why the 1st District is not pretty enough. In fact, Your Honor, the 2001 First Congressional District is more compact under – or is only slightly less compact than the 1997 1st Congressional District which the [34] three-judge court found to be compact. It's very, very close.

Just talking briefly about the 12th District, Your Honor. That district survived the *Cromartie* litigation because the state had drawn that using something called a vote Tabulation District. A vote tabulation district is a piece of census geography which the Census uses to do all sorts of things. In North Carolina, vote tabulation districts are pretty much identical to precincts with some few exceptions, and precincts, of course – the Court is familiar with what precincts are. That's where people go to vote on election day.

The state in '97 and 2001 drew the 12th District to be a strong Democratic district. The software that is available to do that, you can look at the election results on VTD level with no racial data being present. Dr. Ansolabehere admits this in his deposition, that if you looked at election results, you can't tell what the race of the voters are, and that's exactly why the General Assembly in '97 to 2001 and in 2011 drew the 12th District based upon whole VTDs looking at election results because they could not tell the race of the voters.

The difference, Your Honor, is that the 2011 General Assembly drew the 12th District to help Republicans in adjoining districts. Dr. Ansolabehere has not looked at that. He admits he hasn't looked at how the adjoining districts were affected by the way CD 12 was drawn. And if you go back and [35] you check the *Cromartie II* case, that's fatal to his testimony along with his somewhat inexplainable decision to rely on registration statistics.

But even if they had proven – if they could prove, which they can't, that race was the predominant motive for Congressional District 12, because – and I'm quoting, I think, Justice Souter if I'm right. It might be Breyer, but whoever wrote the majority opinion in *Cromartie* – because there's such a high correlation between African-Americans and voting for Democrats that sits over 90 percent. So if you're going to make a more Democratic district, there has got to be more African-Americans in it, particularly in that part of the state where there's a high concentration of African-Americans.

And the Supreme Court in *Cromartie* said where there's a high correlation between African-Americans and the party – the candidate for who they vote for, even if you prove some sort of indication that race was

the predominant motive, the plaintiffs have to offer a map showing how they could draw that district in a way where race was not the predominant motive but also achieving the political goals of the General Assembly.

There's a few other things that counsel said that I disagreed with, Your Honor, but I've taken up enough time. At the end of the day, Your Honor, this is just a fight over a policy decision.

In 2001, Senator Miller drafted the 13th district in [36] a way that's just as strange looking as the 12th District running from Wake County to Greensboro. He actually split up part of Congressman Watt's 12th District in doing that. They put Mecklenburg County into the 8th District to create a district in which a Democrat could defeat Robin Hayes, which happened. Those are all decisions under the cases that were within the discretion of the General Assembly; and just the same as those decisions were not illegal under any theory, what the General Assembly in 2011 did also is lawful and is within the discretion of the state's elected representatives. Thank you very much.

JUDGE OSTEEN: All right. Are the plaintiffs ready to call their first witness?

MR. SPEAS: Yes, Your Honor. But before we call our first witness – Eddy Speas for the plaintiffs – we would like to move the introduction of our Trial Exhibits 1 through 144 previously identified in this matter. It is my understanding that with one exception, all of these documents came from the *Dickson* record, which is the subject of the stipulation that the Court mentioned on Friday. With exception of one document, I believe, there is no objection to the admissibility of the documents. So we would at this

point move the introduction of Plaintiff's Exhibits 1 through 144.

Your Honors, I regret to tell you they're over there in boxes. It's a pile. To make this case manageable for all [37] of us, as we call witnesses, we will give them a witness notebook and share it with you and the clerks that will focus on the particular exhibits that are important for those witnesses. But the immediate matter on the table is we move to introduce Exhibits 1 through 144.

JUDGE OSTEEN: And all those documents, except one, were taken care of in that stipulation filed – like Document 69 or something like that?

MR. SPEAS: Document 70, and we would withdraw that one.

JUDGE OSTEEN: Okay, and use this one?

MR. SPEAS: Yes.

MR. FARR: I'm just questioning Mr. Speas. I think Document 70 is the attorney-client privilege –

MR. SPEAS: Thirteen is the document that's got your name on it.

MR. FARR: Okay. We have an attorney-client privilege objection to Exhibit 13 then, Your Honor.

JUDGE OSTEEN: So plaintiff – so no objection to 1 through 12 and 14 through 144?

MR. FARR: If – and Mr. Speas, I'm sure, has given me the right number. If it's Exhibit – what did you say, 13?

MR. SPEAS: To clarify, we will withdraw our Exhibit 70 which was not in the record in *Rucho*. The only exhibit to which there is an objection is Exhibit 13, which is [38] an email in which Mr. Farr is copied.

To the extent there was a privilege, we think it's been waived, so we would – and it is a part of the *Dickson* record.

JUDGE OSTEEN: All right. So to clarify then, Mr. Farr, no objection to 1 through 12, 14 through 69, and 71 through 144?

MR. FARR: Your Honor, there's one other – there's like an expert report from a group that we objected to on the grounds of hearsay – oh, okay. Yes. So the only objection we have is to Exhibit 13. And, Your Honor, when you look at it, I wasn't just copied, I was giving legal advice to people who were working for the legislature.

JUDGE OSTEEN: All right. Seventy is withdrawn. So I'm going to – 1 through – now, I've got my numbers mixed up. So 1 through 12, 14 through 69, 71 through 144 are admitted without objection. There is a pending objection as to Plaintiff's Exhibit 13. Unless there's a better procedure, to keep us moving this morning, at present I'm going to admit it subject to the objection, and we'll rule on the objection when we have a few minutes.

MR. FARR: I was going to suggest something like that, Your Honor. I was thinking if the Court would look at that at some point in time and just tell us what you think, that would be fine. You don't need to do it right at this moment.

[39] JUDGE OSTEEN: All right. Let me get my numbers right for my notes. 1 through 12 – Plaintiff's Exhibits 1 through 12 are admitted. 14 through 69 are admitted. Plaintiff's Exhibits 71 through 144 are admitted. Plaintiff's Exhibit 13 is admitted pending a final determination of the attorney-client privilege objection. Where are – is that the boxes over there?

MR. SPEAS: Yes, Your Honor. There's a box for each of the judges and each of your clerks. But as I said, as a witness is called, we will hand the witnesses notebooks that contain those exhibits so that it will be manageable for everyone hopefully.

JUDGE OSTEEN: All right. Move forward then.

MR. SPEAS: Your Honors, thank you. We would then call as our first witness Senator Dan Blue. And as Senator Blue comes around, Your Honors, if I may approach the bench?

JUDGE OSTEEN: Yes. Mr. Farr, will it be easier for us to give you these back – hold on just a second – the exhibits you've handed us now and let you hand them up again when you're ready to introduce them, or just keep them up here?

MR. FARR: Whatever the Court prefers. You might like to refer to them as the testimony is going forward.

MR. SPEAS: I have no objection to you keeping them.

JUDGE OSTEEN: Okay. All right.

(Witness sworn by the clerk.)

[40] MR. SPEAS: Your Honor, if I may approach the witness and hand him the exhibits.

THE COURT: You may.

MR. SPEAS: Your Honor, in addition to using the notebook, to the extent my technological skills permit this to happen, I am hoping to put up on the screens the pertinent parts of their testimony so that we will all be talking about the same thing.

THE COURT: All right.

DANIEL BLUE,

PLAINTIFF'S WITNESS SWORN AT 10:04 a.m.

DIRECT EXAMINATION

BY MR. SPEAS:

Q Would you stated your name for the record, please?

A Yes. Good morning, Your Honors. My name is Daniel Blue, Jr.

Q And would you tell the Court a little bit about where you grew up and where you went to school.

A I grew up in Robeson County on a farm in Lumberton. After graduating from the public schools in Robeson County, I enrolled at North Carolina Central University and got a degree in mathematics and from there I went to Duke Law School and graduated from Duke Law School with a JD in 1973.

Q Have you been engaged in the practice of law since then?

A I have, since August 1973 when I got word that I passed [41] the bar exam.

Q And tell the Court just a little bit about your law practice over those years.

A Out of law school, I was recruited to one of the bigger firms in Raleigh. It was Sanford, Cannon, Adams and McCullough, a firm founded by and headed by former Governor Terry Sanford, and I practiced there for a while and then left.

I along with two other associates of my earlier associates established a law firm in Raleigh, Thigpen, Blue & Stephens, and since that time I have practiced with that firm in one iteration or the other, but it's now Blue, Stephens & Fellers in Raleigh, and so for the last

42 – 42 plus years, we've consecutively practiced general litigation but also specializing in some subareas.

Q Did your work with former Governor Sanford inspire you to get involved in political life yourself?

A It did. Growing up, it's not popular now, but I was nailing signs up on light posts and trees when Sanford was running for governor in 1960. I was a little boy. I was 10 years old, 11, and so when we joined the firm, one of the requirements that Sanford had – who at that time had become president at Duke but was still involved in the firm, is that everybody had to do something politically oriented, whether it was work in your precincts or run for office or do various things. Multiple people in the firm ran and served in various [42] public offices around Wake County and around the state.

Q And you yourself have served in public office, I believe?

A I was elected to the North Carolina House of representatives in 1980, and I served continuously in that body until 2001 when a slight fit of insanity hit me and I ran for the United States Senate. I stayed out of the legislature from 2003 and went back in 2006 back to the House and went over to the Senate in 2009.

Q And during your many years, I guess more than 30 years now in the legislature, were you involved in various redistricting decisions by the North Carolina General Assembly as a member of the General Assembly?

A I have been since 1980, in November when I was certified as a member of the House. I've somewhat been involved. In the 1981 session of the General Assembly, I was involved both in

Congressional Redistricting Committees and the House Redistricting Committee, and was involved in the districts that led to *Gingles*.

I was first elected county wide in Wake County and ran county wide on several occasions. In '84 as a result of *Gingles*, *Gingles* versus – became *Gingles* versus *Thornburg*, but as a result of that case, a single member district, a system of single member districts were created in Wake County, and what had been a six member at large district became six single member districts, so I represented those.

[43] In 1990, I was involved pretty intimately in the redistricting process. I was elected Speaker of the House of the session that began in 1991, so not only was I involved, I appointed the redistricting committees, both the House Redistricting and the Congressional Redistricting Committees and was involved in many of the discussions regarding the 1991 Congressional Redistricting effort, and so I did that.

And then in 2000 I was still in the House, and I was involved in the redistricting discussions, both at the Congressional level as well as in the House redistricting, and I was not involved in the redistricting committee. I was not appointed to the Senate Redistricting Committee in 2011, although I tried hard to be and had a guy who was a senator who was going to resign so that I could serve there, but it was a choice of the president pro tem of the Senate not to appoint me to redistricting, but I was still involved in following the hearings and listening to testimony and talking to people all across the state regarding the redistricting effort.

Q Okay. Now, were you involved in the redrawing of Congressional District 1 and Congres-sional District

12 in 1997 following the 1996 decision of the US Supreme Court in *Shaw v Hunt*?

A I was.

Q Okay. And Senator Blue, I would ask you to turn to the tab behind your testimony marked 73, which is Plaintiff's [44] Exhibit 73, and if our paralegal could put that up on the screen. Is it there? Yes. Thank you.

Senator, is this the Section 5 submission made to the US Department of Justice by the North Carolina General Assembly in 1997 sending forth for preclearance the rewrite of those Congressional 1 and Congressional 12 following the *Shaw* decision?

A Yes, that's what it purports to be, and that's what it is, typical cover letter sent with submissions.

Q And would you turn to pages 10 – I'm sorry, nine and 10 of that document, and there's a section there entitled, "Effect of Change on Minority Voters," is that correct?

A That's correct.

Q And is it fair to say – I don't want you to get into read it or anything like that. Is it fair to say in that section, the North Carolina General Assembly explained to the US Department of Justice the criteria that it was following and the factors that it was considering in establishing those districts?

A That is a correct characterization of it, and that is consistent with typical explanations that had been given; but, yes, it clearly says what the criteria is and what the factors are that are being considered.

Q And would you actually read for us the first two sentences of that section?

[45] A "The General Assembly's primary goal in redrawing the plan was to remedy the constitutional defects in the former plan. Those defects were the predominance of race in the location and shape of Districts 12, and perhaps in the location and shape of District 1, and a failure of narrow tailoring."

Q And would you look with me to page 10 of that document, the 6th line from the top, I believe, and is it accurate that the legislature applying the criteria it described there and weighing the factors it described there, set the voting – black voting-age population for Congressional 1 in 1997 at 46.54 percent?

A That's – that states it correctly, yes.

Q Okay. Now, was the '97 legislation precleared by the US Department of Justice?

A Yes, it was.

Q Was any suit filed challenging that legislation under Section 2 of the Voting Rights Act?

A There was no suit under Section 2 of the Voting Rights Act. Yeah, as I recall correctly, there was not.

Q And that brings us to the 2001 redistricting. You were in the legislature?

A I was.

Q And is it fair to say that the Congressional 1 and Congressional 12 in the 2001 plan looked a fair amount like the '97 versions?

[46] A They did. They did.

Q And were those versions precleared by the US Department of Justice?

A They were.

Q And was any suit filed during that decade challenging any of those districts on Section 2 grounds?

A There was no suit filed against them on Section 2 basis; and, in fact, Mr. Speas had the honor, I call it that, but when I was Speaker, the challenges on the basis of Section 2 were – basically it was the Justice Department objecting because we were refusing to create a second Congressional District that was race based.

Following the redistricting, it was pretty much concluded that polarization and all of those issues existed in the northeast and the east primarily, and you could draw a district that was contiguous and somewhat compact, but with respect to a second minority Congressional District, we made the call, primarily with my urging, not to create a second Congressional District and the United States Department of Justice corrected us on that and made us go back and do it.

Q That was in '91?

A That was in '91.

Q Not 2000?

A Yeah, that's what I was saying all of that to say that subsequent to that, I think that may have been the last [47] Section 2 challenge that was started out as Section 5. May have been the last Section 2 challenge, other than leading up to the earlier – the '97 remapping.

Q I apologize for my confusing question. My question is addressed to the 2001 plan. Was it precleared?

A It was precleared, and there was no lawsuit brought in connection with it.

Q Now, that brings us to 2011. You were in the legislature?

A Yes, sir.

Q And you were not on the Redistricting Team Committee, but is it fair to say you have an avid interest in redistricting?

A I do.

Q Would you provide the Court with an overview of this 2011 redistricting process as you saw it as a member of the Senate.

A As a sitting member of the Senate, again, there was – I think maybe it was in June or July sort of that there was this discussion after the census data had been received where Senator Rucho, who was the Senate chairman of both Senate Redistricting and Congressional Redistricting, along with Representative Lewis who was his counterpart in the House sort of sprung them out, and said these are the things that we're looking for in redistricting, and we're going to have public hearings to see what the public reaction is to what they're trying to do. That's sort of the background of how we started talking about redistricting.

[48] Q So it's accurate that first plans are presented by the defendants here some time in mid-June and then they're enacted by the end of July; is that –

A Yes, that's accurate.

Q And that's Congressional and State House and State Senate?

A That's right.

Q So it was a pretty quick process?

A It was a quick process, and there was – for all intents and purposes there was no real external input other than they're presenting the map, and any tweaking or changes they did among themselves. I mean, the – there were no changes that were adopted that may have come from anybody externally in the sense of legislators not on the committee.

Q And what role did Senator Rucho and Representative Lewis play in this process?

A Senator Rucho was the Senate Chair of Congressional as well as Senate Redistricting. Representative Lewis was the House Chair of House Redistricting and Joint Chair of the Congressional Redistricting, and for the most part, the two of them drew the maps – not necessarily drew them, but supervised the drawing of the maps, which were done external of the General Assembly.

Q And do you know who actually drew the maps?

A Mr. Tom Hofeller.

Q Okay.

[49] A I've learned since then drew the maps, and that's what we learned during the course of the enactment of the plans.

Q Did Mr. Hofeller ever appear in the legislature and explain how he drew the plans?

A No, sir.

Q Okay. Now, I think the historical record establishes that Senator Rucho and Representative Lewis communicated their criteria for developing these plans in a series of public statements, is that correct?

A Yes, they on several occasions, both written and I think in press conference form, indicated what they were looking for and what they were looking at in trying to arrive at the redistricting plans.

Q And did they explain in these statements and in other places their understanding of their obligations under the Voting Rights Act?

A Well, the thing that stood out is that they explained that their obligation was to create voting rights districts, Voting Rights Act districts pretty much throughout the state, both legislatively and congressionally and that the criteria that they had to adhere to was the 50 percent plus voting-age population in each of the districts because that's what they read *Strickland* to mean.

Q And, Senator, if you would turn to the tab in – after your notebook that's labeled five, it's in front of – actually [50] Defendant's Exhibit 55 is a very nice collection of all the public statements. Is the first public statement issued in June, on June 17, 2001 –

A It is.

Q – 2011?

A It is June 17, 2011, issued from them.

Q And could we put page 2 of that up on the screen?

THE COURT: Let me ask a question. So in the notebook, the tab five is Plaintiff's Exhibit 5?

MR. SPEAS: I'm sorry, Your Honor, it got mislabeled. It's Defendant's Exhibit 55 which we listed as, you know, we – in our –

THE COURT: So the defendant/plaintiff labels may not mean anything as we go along?

MR. SPEAS: Not in this particular instance. I'm sorry for the confusion.

THE COURT: So it's Defendant's Exhibit – I have on the first page a deposition Exhibit 55, and then down at the bottom I have a copy of a Defendant's Exhibit something. How do these numbers –

MR. SPEAS: I thought it was 55. Maybe I'm confused.

MR. FARR: Your Honor, Defendant's 55 is some testimony from a person in a public hearing, and our version of what Mr. Speas was referring to is I think it's Defendant's –

THE COURT: So the sticker at the bottom that says [51] Defendant's Exhibit D-5.11 is the number for the record?

MR. FARR: Yeah, Your Honor. I think the defendant's sticker for this case on the screen is in blue at the bottom. The exhibit number at the top was the exhibit number in the *Dickson* case. I think that clears it up.

THE COURT: Okay. So make sure, as you go along, do the best you can to get me the right numbers.

MR. SPEAS: I apologize, Your Honor. It's Defendant's Exhibit D-5.11.

THE COURT: Okay.

BY MR. SPEAS:

Q Senator Blue, now that I've not confused it too terribly I hope, would you look on the second page of this exhibit which is one of the public statements and read into the record the second paragraph, beginning paragraph, the first two sentences beginning, "In creating."

A Yes, sir. "In creating new majority African-American districts, we are obliged to follow the decisions in *Stephenson* 1 and 2 as well as the decision by the North Carolina Supreme Court and the United States Supreme Court in *Strickland versus Bartlett*, with a cite. Under the *Strickland* decisions, districts created to comply with Section 2 of the Voting Rights Act must be created with a black voting-age population, BVAP, as reported by the census at the level of at least 50 percent plus one."

[52] Q Okay. And would you look – that was from the June 17 public statement?

A Yes, that was from the joint statement by Senator Rucho and Representative Lewis dated or released June 17, 2011.

Q And I'm going to ask our paralegal to put up on the screen the public statement dated July 12, particularly page 4. Do you have the July 12 statement?

A Is that – do you mean on page 4 of this document? Yes, I'm looking at page 4 of the document.

Q Okay.

THE COURT: While we're stopped. We had an air conditioning problem of all things this morning. The chillers went down and GSA was slow. So to get us restarted, I understand the problem has supposedly been taken care of, but it's going to take a little while for the cooling to fix this courtroom, and I apologize for that.

BY MR. SPEAS:

Q Senator Blue, could you look over at the screen. That's the particular part of the July 12 statement I'm

interested in. Could you read that into the record, please.

A Sure. First, we have complied, as we must, with the holding by the United States Supreme Court and the North Carolina Supreme Court in *Strickland versus Bartlett*, with a cite. These decisions require that districts drawn to insulate the state from liability under the Voting Rights Act must be [53] drawn with a black voting-age population in excess of 50 percent plus one.

THE COURT: Let me make sure I understand where that comes from. Where is –

MR. SPEAS: It comes from the July 12 public statement which is a part of Defendant's Exhibit D-5.11.

THE COURT: Oh, that's page 2.

MR. SPEAS: I apologize for the confusion, 5.11. I apologize for the confusion. This exhibit contains all the public statements issued.

THE COURT: All right.

BY MR. SPEAS:

Q Now, were you in debates in the legislature where these same statements were made by Senator Rucho?

A Was I in the legislature?

Q Yes.

A Sure.

Q And you heard these statements on the floor of the Senate?

A Well, this statement was from a July statement that he made, but I've heard him make, yes, the

statement because this wasn't the only time. He said that multiple times.

Q Okay. Now, let me now ask you, Senator Blue, if you would look at the July 1 public statement which is a part of Defendant's Exhibit D-5.11 at page 3.

A I have that.

[54] Q Did you – do you have that in front of you?

A I have page 3, yes.

Q Okay. And if you would look at page 3 of that statement, would you – could we put this up on the screen, please. Senator Blue, if you would look at the screen. Is that up? I'm sorry, Your Honor, I'm having a hard time seeing. Your Honor, I've managed to completely confuse myself. Let's just skip by that for the moment.

Let's look, Senator, at exhibit – Plaintiff's Exhibit 139 which is in front of you under tab 139.

A Got it.

Q Is that a transcript of the July 25, 2011 session of the North Carolina General Assembly?

A It is.

Q And would you look at pages 8 and 9, particularly at the bottom of page 8, at line 19, the paragraph beginning "however."

A I got it.

Q Okay. Would you read that into the record, please.

A It says, "However, we must alter the 2001 version of the first district because of two flaws. First, the current first district is underpopulated by over 97,000 people. Secondly, it does not include a majority-

black age voting - black voting-age population, better known as BVAP, as required by Section 2 of the Voting Rights Act, see *Strickland* and *Bartlett - Bartlett* [55] excuse me. Thus any revision of the first district requires the addition of over 97,000 people. Also, the added population must include a sufficient number of African-Americans so that the first district can re-establish as a majority-black district.

Prior to our release of the Rucho/Lewis 1, we discussed both of these problems with Congressman Butterfield. We believe that he understood and agreed that his district would be drawn in either Wake or Durham County to cure the district's equal population and voting rights deficiencies. We understood that Congressman Butterfield preferred that his district be drawn in Wake instead of Durham. We also discussed with Congressman Butterfield that drawing his district in Wake County may result in the withdrawal from his district of one or more counties covered by Section 5 of the Voting Rights Act."

Q Okay. Thank you. And when the General Assembly enacted the Congressional Plan in July, did Congressional District 1 contain more than 50 percent voting-age – black voting-age population?

A The plan finally enacted did.

Q Okay. And let me go back just a moment to your district.

You were in Senate District 14, I believe?

A I am in Senate District 14, yes.

Q And tell the Court what Senate District 14 was like in 2010 in terms of shape and in terms of voting – black [56] voting-age population.

MR. STRACH: Objection, Your Honor.

THE COURT: Basis?

MR. STRACH: It appears that the line of questioning is going into legislative districts. This matter seems to be focused on Congressional Districts, so we'd simply note objection, Your Honor, to testimony from Senator Blue regarding Legislative Senate District 14.

THE COURT: Relevance of the statement?

MR. SPEAS: It illustrates the application of the 50 percent plus one rule.

THE COURT: Just a second. Is it for illustrative purposes only, in your opinion?

MR. SPEAS: Yes.

THE COURT: Yes, sir?

MR. STRACH: We wouldn't have any objection to it for illustrative purposes.

THE COURT: No objection?

MR. STRACH: For illustrative purposes.

THE COURT: For illustrative – hold on just a second.

(Discussion among judges.)

THE COURT: We'll allow it for illustrative purposes.

MR. SPEAS: Thank you, Your Honors.

BY MR. SPEAS:

[57] Q Senator Blue, briefly, tell the Court what your district was like in 2010 before it was redrawn in terms of shape and population.

A Yeah, my district, as the other districts that later became the majority minority districts was well

under 50 percent black, not only voting-age population but black population, and the idea that Senator Rucho expressed in the press release that you saw earlier as well as in his statement on the floor was that any district drawn to satisfy the requirements as he perceived of Section 2 of the Voting Rights Act had to be more than 50 percent plus voting – black voting-age population.

So my district was somewhere down in the low 40s, 40, 41, 42 at most and had consistently been that level. It had 70 or 80,000 people too many in it, and by the time we did 2010 census; but, anyhow, my district is illustrative of what happened to the other districts that had black senators in that it was taken from roughly 40, 42 percent black population, black voting-age population, to in excess of 50 percent, and that was the same – same thoughts that he had expressed about the Congressional Districts, that even though they were below 50 percent, that he was going to take them above 50 percent black voting-age population.

Q And at some point in the legislative process, you posed to Senator Rucho the question, what is it about the Voting Rights [58] Act that requires you to increase the black voting-age population in districts that are less than 50 percent that are already electing African-American candidates?

A He said it was his understanding and his belief that he had to take them all beyond 50 percent because *Strickland* informed him that that's what he's supposed to do.

Q Now, let me ask you, Senator, to do this for me. We've talked about the 2001 plan that was precleared by US Justice, or plans that were precleared, and we talked about the 2011 plan. The 2001 plan had

how many majority African-American voting-age population districts, the 2001 plan?

A I believe the 2001 plan had nine.

Q No, I'm sorry. Congressional Districts?

A Congressional District. The 2001 plan had two districts that had black Congress people representing them. Neither of those districts was over 50 percent black voting-age population.

Q And the enacted plan had how many districts over 50 percent?

A In 2001? Oh, in 2011.

Q Yes.

A The 2011 plan took both districts in excess of 50 percent or at least attempted to take both districts in excess of 50 percent black voting-age population.

Q And how many districts, Senate districts, in the 2001 plan [59] had a majority-black African-American voting-age population?

A Nine Senate districts.

Q No in 2001?

A 2001? 2001 had no State Senate districts. However, black voting-age population in excess of 50 percent. The range ran from I think the high 20s, even lower than that in a district that was represented by a black Senator in Alamance County, but the 2001 plan, or three plan as finally enacted, had no North Carolina Senate districts that had black voting-age population above 50 percent.

Q And the 2011 Senate plan had how many majority –

A It went from zero in the 2003 final plan to nine in the 2011 plan. So zero in 2003 had over 50 percent – had 50 percent plus black voting-age population, nine following the 2011 redistricting had 50 percent black voting-age population.

Q And on the House side, in 2001, do you recall approximately how many House districts had majority-black voting-age populations?

A The House had – it was either 10 or 11 black voting-age population districts in 2001 and 2003 after the redistricting effort, and the 2011 plan, the House had 23 black voting-age population districts.

Q That –

A That were over 50 percent.

Q So let me see if I've got this right and to summarize. [60] The Senate plan went from no majority-black voting-age population district in 2001 to nine in 2011?

A That's correct.

Q The House went from 10 majority African-American voting-age districts in 2001 to 23 in 2011?

A That's accurate.

Q And in the Congressional side, the 2001 plan had no Congressional District with a majority voting-age population black; the 2011 plan had two?

A That's correct.

Q Now, did you vote on all three of these plans?

A I voted on all three of them, yes.

Q And how did you –

A No, no, no, I voted on two of them. I couldn't vote for the House plan.

Q Okay.

A I could at the end –

Q How did you vote?

A I could at the end, but I voted – I voted no on all of them, and every other black Senator voted no on all of them, all three plans. And the reason I made the comment earlier is typically the Senate affirms what the House does its plans, and the House affirms what the Senate does to its plan, and then both fight about the Congressional Plan.

But in this case all of the African-American [61] senators, and there were nine at the time, nine who came from these non-majority-black districts, all voted against the plan. No, there may have been more than that at the time; but, anyway, all of them voted against it, and all of the House members voted against all three plans, the black House members.

Q All of the African-American members of the Senate in 2011 voted against the plan that was finally enacted for the Senate and the plan finally enacted for Congress?

A Yes.

Q Okay. Would you take a minute and just tell the Court why you opposed these plans that created all these new for the first time majority African-American voting-age population districts.

A Well, there's several reasons, but the most obvious was that this was seen among those who had been elected to represent all of the people in their districts, not just the black citizens in their districts, it was seen as a balkanization of the electorate, and basically a ghettoization of the black elected officials.

It was creating districts where they were not needed and where they were not justified to create a majority-black district in Wake County, and this was part of a discussion with the Congressional debate as well. A county that since the passage of the Voting Rights Act shortly thereafter had consistently elected minorities in county-wide positions; a [62] county which had two of the four constitutional officers, the Register of Deeds and the sheriff, two of the four county constitutional officers elected county wide were minority; a county that had elected judges county wide and in districts since following the passage of the Voting Rights Act, a county that had elected African-Americans at every level of county Government to the legislature, as well as other places, school board, and everything else; a county that had elected three African-Americans at the same time in – from 2000 to 2010 to the House of Representatives, although there was only one majority minority district, and it was not over 50 percent, but had elected African-Americans in districts that were under 20 percent African-American, a second district that was under 30 percent African-American, that there was no indication that you needed to draw districts that were over 50 percent African-Americans in order to achieve the purposes of the Voting Rights Act; and, quite frankly, it was offensive to most of those of us who represented the people of our districts and especially those of us who were African-American.

It was acting as if the Voting Rights Act had determined that things would go in a negative direction, that you would create these districts, and they would sit there forever, that they would not grow with time, that they would not expand, that they would not basically do what we felt the Voting Rights Act was designed to do, and that is eliminate the [63]

need for race – race use in any kind of districting or any kind of plan as we basically made the promise of America apply equally to everybody.

And this plan was seen as basically reversing all of that, ignoring the last 50 years of history and acting as if Wake County, which had a record that I just described to you, I was elected county wide to the General Assembly, we had a senator elected county wide, but that Wake County had the same history or the same proclivities as some of the other counties where remedial action was necessary. That was an insult not only to the black citizens of Wake County, but to everybody in Wake County, including the white citizens who had been told that they were racist, that they voted in a polarized fashion, when the record showed they did not. When the record showed they voted in coalition forms, voted for candidates, and that there was no need to have special privileges and special districts set aside that became – I called them, I think in my floor debate, townships like existed in South Africa.

MR. SPEAS: Thank you, Senator Blue.

THE WITNESS: Yes, sir.

THE COURT: Cross-examination?

MR. STRACH: Yes, Your Honor, Phil Strach for defendants.

[64] CROSS-EXAMINATION

BY MR. STRACH:

Q Good morning, Senator Blue.

A Good morning, Phil.

Q Good to see you again.

A Same here.

Q Senator Blue, you just had a discussion about Wake County. If the legislature had drawn a Senate district for you that was in the 10 to 15 percent black voting-age population range, would you have agreed to that?

A I probably would have, yes.

Q Do you believe –

A I got elected in a district initially that was less than 15 percent black voting-age population.

Q Do you believe that a black candidate other than yourself could be elected in that district?

A Yes, I just indicated that county wide we elected a sheriff when less than 15 percent of the county population, black voting-age population – when less than 15 percent of the county's black voting-age population was African-American.

We elected county commissioners. We elected judges county wide in districts that had less than 15 percent registered black vote. The vote in Wake County now is approximately 23, 24 percent African-American, reflects the state population pretty much; and, again, consistently, that [65] county has elected African-Americans.

There is no study that I'm aware of that I have seen, and I've followed this for the last 30 plus years, that shows that degree of polarized voting in Wake County that would justify the creation of these super majority minority districts, a super saturated minority districts.

One of the things that, Phil, that distinguished Wake County from some of the other urban counties is that most of the black voting-age population and the black population did not live in just one section of

Raleigh, of Wake County, and so part of the difficulty in drawing districts, if you determine that you're going to make a certain percent black, you've got to have all these strange appendages all over your maps because you've got to reach into neighborhoods that are not majority-black, but they've got majority-black pockets in them. And so you reach all over the place getting pieces of votes through neighborhoods without regard to other things that unify those neighborhoods.

So, yeah, I would have voted for a plan that naturally divided Wake County on some basis. I think it would have been tough to draw a plan that did not have at least a House district or a Senate district with over 25, 30 percent minority population if you kept together the natural area in southeast Raleigh, but that that would have been the natural thing. You could have drawn a district 30 percent black [66] voting-age population I think that would have been acceptable to most people.

Q Do you – were you aware of alternative Legislative and Congressional Plans proposed by the Legislative Black Caucus.

A I'm aware of two or three other groups that proposed plans.

Q Did you have any input on the – the alternative maps that were proposed by the Legislative Black Caucus?

A The only influence I had was to convince people that it made no sense to pack all African-Americans in as few of districts as possible. I didn't have any plans on the final proposal that they sent forth. In fact, I disagreed with some of the districts that they proposed to create.

Q Were you aware that the Legislative Black Caucus proposed House districts – or at least one House district in Wake County that was majority-black?

A Yeah, it was a continuation of old House District 33, I believe; and, again, as I say, if you go into southeast Raleigh which is a traditional African-American area of town, you can come up with 40,000 African-Americans without having contorted districts, without having strange appendages. So if you just take that population, you'll end up with a district that's close to 50 percent African-American.

But what the legislature did, for the first time they created two African-American House Districts in Wake County [67] that have strange looks to them; and, again, in light of the fact that Wake County had elected three African-Americans in districts that were far less than the 30, 40 percent African-American black voting-age population.

Q Now, you're talking about blacks that have been elected county wide, correct?

A County wide and district wide, no, no, no. They were elected in specific districts. There was one district in the Knightdale/Raleigh area that had 29 percent black population, black voting-age population, that consistently elected a black woman. There was another district in northwest Raleigh that elected and reelected Ty Harrell. That district was less than 20 percent African-American. All of that was done and occurred between 2001 and 2010.

Q Now, the candidate in the district that you just mentioned that had 29, 30 percent in the Knightdale area, who – was that Linda Coleman?

A Linda Coleman won reelection in that district.

Q How many times?

A She ran – again, I was out of the House from 2003 to 2006. Linda was there when I got back, and she ran - she was re-elected – I think she was re-elected two times, and then she chose to join the cabinet of Governor Perdue after Governor Perdue was elected in 2009.

Q Right. And do you know who won that district after she [68] left that district?

A Darren Jackson. I don't think there was a black opponent. If it was, it wasn't a serious one.

Q But he's white, correct?

A Darren is white, yes.

Q Now, Senator Blue, you said that you were in the North Carolina House from 1980, and I think you were there through December 31 of 2002?

A That's correct.

Q Is that correct? So you were consistently elected from either a multimember district or your single member district from 1980 to – to through 2000, is that correct?

A That's correct.

Q And so you were in the State House when the 2001 Congressional Plan was enacted?

A I was.

Q And you were on the redistricting committee?

A I was. I was.

Q All right. So –

A I was traveling pretty extensively as a said. I was running for the – in the primary for the United

States Senate, so I have to admit that I probably didn't put as much time in the legislature as I should have, but I paid attention to redistricting.

Q But you were on the redistricting committee, so you had a [69] direct voice in the drawing of those maps, correct?

A Yep, sure, as well as other members. It was an open process. Not only those on the redistricting committee, but members of the House had pretty free rein to say what they believed, and everybody reviewed their own districts.

Q Do you remember how many times you ran in multimember districts at the beginning?

A Primary and general elections?

Q Just – yeah, primary and general.

A I ran in multimember districts in three or four primaries, I think, and two general elections.

Q All right. And then that's after the *Gingles* litigation that then went to a single member district?

A Yes, after *Gingles* and after '84 it became a single member district.

Q All right.

A And it became a single member district not – because the proposal that had been made after *Gingles* was handed down was that we create single member districts in the urban areas, including those that were not necessarily affected by *Gingles*. For example, in Durham County, the *Gingles* decision determined that there did not have to be any majority minority district. *Gingles* specifically said Durham did not have polarized voting, but decision was made in the General Assembly so that these districts wouldn't be isolated and stand out as different, that [70] if we were going

to create single member districts in these urban areas, that all of the districts in the urban areas would become single member districts and we would totally dismantle the multimember districts that would remain; but that, again, was to make sure that these majority-black districts that were deemed necessary by *Gingles* were not sort of looked at as again isolated and ghettoized districts.

Q So in a multimember district, Senator Blue, you said that Wake County was a six member multimember district, so six seats – voters could vote for six seats at one time county wide, is that correct?

A That's correct.

Q And so in that situation a voter – there might be several white candidates, there might be several black candidates within that pool of how ever many candidates were running, correct?

A That's right.

Q So in that situation in a multimember district, voters have the option of voting both for white candidates and black candidates at the same time, is that correct?

A That's correct.

Q All right. And in a single member district, you have to vote for one or the other?

A That's correct.

Q All right.

[71] A Unless both of them are the – you know, two blacks or two white candidates.

Q Right. And in a multimember district, are you familiar with the concept of single shop voting?

A Sure.

Q What is single-shot voting?

A Single-shot you can vote for one or fewer than all of the available slots that you have that you could vote in. Single-shot voting was a technique perfected primarily in the '50's and '60's as a way to get over these districts. I don't defend multimember districts, but I'm saying over time you learn how to adapt and you make whatever you have work for you.

So single-shotting was – single-shooting was one of the techniques that was developed to elect minorities in districts where minorities hadn't been elected so that you didn't have to vote, say, for all six. You could vote for your top three candidates, and the probability that one of them or two of them or three of them would win was much greater if you didn't spread your votes to the others.

Q All right. So that was one way in the multiple member system that black voters could overcome the effects of racially polarized voting, is that correct?

A One way, yes.

Q So – because otherwise you might have a sizeable compact population of black voters who would otherwise be submerged [72] county wide, is that correct?

A If there's a sizeable enough bloc, and you got contiguous compact base, I think it's pretty clear that you ought to draw the district that would be natural in that population.

Q All right. Now, and once you – once you went over to a single member district, particularly when you were in the State House, you were running in and winning in just a small portion of Wake County itself, correct?

A Yeah, much smaller portion, part of the county rather than the full county.

Q Right. And so is it fair to say that the vast majority of the elections you won in in the State House were in that smaller portion of Wake County?

A Oh, sure. I mean, I ran from '84 through 2000 in that smaller district, mostly without primaries, but generally in the general election I had very little opposition and – in the primary and, quite frankly, not a lot in the general elections.

Q Right. And do you think part of that is because after you'd won several elections, you had the benefits of incumbency?

A Well, I'd like to think that it was because of how I represented the district. I don't think that longevity in and of itself necessarily commands that you keep holding a position. I'd like to think that the citizens of the district thought that I represented them adequately and well.

[73] Q Sure, but the longer you personally represent the district and do a good job, the more the voters get to know you personally, correct?

A Yeah, but I would add that following that logic you'd rarely get an incumbent defeated, and it happens more often than you think; and, in fact, one of the prime examples is one of these minority districts in Charlotte, where a sitting black Senator – where a black Senator-to-be defeated one of the most powerful white legislators in the Senate in a district that had only 28, 29 percent black population.

Malcolm Graham beat Fountain Odom down there, and that's one of the districts, again, that had this same logic applied to it, that any time you created a majority-black district it had to go over 50 percent,

which is the same logic that was applied with respect to the Congressional Redistricting.

Q But, Senator Blue, you agree with me that over time the name recognition that you gathered in your district certainly helped you win elections?

A Oh, I concede that it has value, yes.

Q All right.

A Before social media it had a lot more value than it does now.

Q And, Senator Blue, you brought up your Senate district, and since you brought it up, I want to make sure I clarify a [74] few points about it. Before 2011, you're in Senate District 14, correct?

A That's correct.

Q And it's in Wake County?

A Yes.

Q Before 2011, your Senate District 14 did, in fact, have a total minority population, black plus other minorities, exceeding 50 percent, is that correct?

A It has – again, it started downtown, and it went out all of Eastern Wake County, and in that area, there was a pretty sizeable Hispanic population. I don't know what the percentage was, but I think that the black and Hispanic population, most of which was not registered to vote, by the way, may have – it did not exceed 50 percent, I don't think. I mean, I didn't study close with stuff like – but I don't think it exceeded 50 percent.

Q But you don't think – your district before 2011 was certainly not majority white, was it?

A I think it was majority white.

Q Do you recall testifying in the *Dixon v. Rucho* state court proceedings?

A I do.

Q Do you recall testifying about this point about whether your district was minority 50 percent plus before 2011?

A I recall – I don't know what I said about it. The [75] district is what it is; but, again, I don't think that it is majority minority. I know it's not majority minority black voting-age population.

Q If you testified then that you believe that your district before 2011 had minority population exceeding 50 percent, would you be willing to stand on that assuming that's what the record says?

A That my district had more than 50 percent black population?

Q Black plus Hispanic?

A It may have. I mean, again, I don't – I don't know exactly what the black plus Hispanic plus Asian population was in my district.

Q All right.

A But, again, the important thing is I know, because I had studied it, it did not have a majority-black voting-age population, and I stand by my statement that the black population, black voting-age population, was somewhere in the low 40s, 40, 42 percent. And, you know, forgive me, that's not the most important thing to me in representing the district, because I figured I represented all 190,000 people in the district, not just 80, 90,000 who may have been African-American.

Q I understand, but you have been involved in redistricting, you understand the important

distinctions between crossover [76] districts, say, and coalition districts, is that right?

A Yeah, I understand that.

Q And so you – would you agree that if your district was over 50 percent minority of all minorities, then that was a coalition district not a crossover district? Would you agree with that?

A Well, it depends on whether they were coalescing. It depends on – I mean, I think that the definition of a coalition district is a district where there's evidence that people are coalescing, that they're coming together for a common purpose, not some predetermined description of it, at least that's how I define a coalition district, and that's what we tried creating in Wake County from about 1976 to 1980 forward.

Q So you were trying to create coalition districts?

A Coalitions between people of different viewpoints, different races, different origins so that we were looking for a common way to address the problems in the district so that race played no issue in how you address the problems, but you focused on dealing with the issues that you ought to as an elected official.

Q All right. So what in – what is – in your understanding, what is the difference between a crossover district and a coalition district?

A I don't know whether those are terms of art the way you're [77] using them, but a crossover district I look at as a district that was involved in *Strickland*. *Strickland* was a crossover district because even though it was not a majority-black district, historically white voters had crossed over and voted for the black representative, and they had two or three in the cycle

from 2001 until *Strickland* was decided, two or three black representatives.

And although it was not majority minority, consistently the white vote would go for the African-American candidate, whether primary or general election. That's what I considered a crossover district, and that's what I thought that *Strickland* was addressing.

Q All right. Do you know if any of the single member house districts you ever ran in were majority white district of the total population or voting-age?

A You mean other than the at large district that I ran in?

Q Right.

A In the '90s, because of the intervention of the Justice

Department in creating these districts initially, I think initially pre-district, and I think it was 33 in the '90s, the numbers changed in 2000. It may have been 13 or something, it may have been another district number, but when they were first created, the directive was to create all of these districts somewhere, and the number that the Justice Department felt comfortable could elect African-Americans. [78] For example, there was a district created in Northeastern North Carolina where there's a pretty rich history at the time of polarized voting that the Justice Department rejected because it did not have in excess of 68 percent black population in it, but that number over time came down, and the Justice Department started accepting smaller numbers as one would hope it would if the Voting Rights Act was having the effect that it was designed to have.

And so the same thing may be true with respect to how the initial majority minority districts were created in the urban areas, in 1984 as well as in 2000 – I mean, in '91 and 2000 I do know that there was a big push made in '91 to create 20 some majority minority districts, and we resisted that and refused to do it, and that's why I think ultimately you had 10 or 12 majority-black districts with more than 50 percent black voting-age population.

Q I appreciate that, Senator Blue. My question is actually much more simple than that. It simply is do you know whether you've ever run in Wake County in a House, a single member House district, that was majority white?

A Majority white?

Q Yes.

A I think I probably have. Again, I don't know what the final makeup – how the district changed from 2000 – from 1991 to 2000, but understand that Wake County – Wake County's [79] population and the city of Raleigh's population increased almost exponentially. So a county went from three, 400,000 people to a million by the time we got around to 2010, so my district was growing and it was a downtown district and downtown was gentrifying and whites were moving in.

The suburbs that were developing around it had mostly whites moving in, so the district could have been majority-black again – I mean, majority white. I simply did not study it. I may have looked at it when we finally went back to redistricting as to what it finally looked like; but so, yeah, during that period, it probably was majority white at some point.

Q But you haven't looked at any data to confirm that?

A Gut feeling tells me that it was majority white at different junctures; but, again, when you're getting 70, 80 percent of the vote, you don't go down to drill down to see where polarized voting is occurring, and that's the kind of result that we were getting in my House district and in the Senate district. Not only me, but at districts that were less than 50 percent majority-black majority.

The black candidate was getting in excess of 60 percent of the vote, and sometimes up towards 70 percent of the vote and the general election; and so, again, you were not so mindful as to who made up certain segments. If you ask me whether I routinely won in majority white precincts, because [80] the voting tabulation districts were the precinct levels, I consistently won, and so did other black candidates, in Wake County in majority white precincts.

MR. STRACH: Your Honor, I have another couple lines of questions.

THE COURT: Is now a good time to take a mid-morning recess?

MR. STRACH: Yes, Your Honor.

THE COURT: All right. Let's take a 15-minute recess. Before we walk out, let me see counsel up here at the bench. We can do it with two, Farr and Hamilton will be fine.

(Bench conference as follows:)

THE COURT: I'm speaking for myself at this point. I'm going to talk to these other judges about it over the recess. During the course of the opening statements, which I thought overall were very well done, there was

some argument back and forth, a comment about Eastern Bloc stuff and then was responded to in kind, shall we say, during the – and I'm afraid that kind of set a stage for what I perceive to be – these other judges may disagree with me – questions and answers that are running the gamut from factual to political opinion to political argument in some respects.

And I'm not criticizing the witnesses. This is a very difficult case to stay out of areas of political opinions and views, and I'm not suggesting at this point that it should [81] stop. But my observation is that as we proceeded through opening statements and have heard testimony from the first witness, both through opening, the questions and various other things, we've got, at least in my mind, we've got a mix.

And, again, these other judges may overrule me and disagree with me on this, but we've got kind of a mix of factual information, commentary on legal analysis of cases and various other things, which are important part of it, but I want to make sure in terms of the questioning that we stay focused on, as I see it, at least the factual part of this trial.

I don't want this thing to drag on to four days because we've got a lot of commentary that may or may not be helpful to get us to the final end result, and at least in my mind the way to avoid it is make sure on both sides that the questions are appropriate and tailored to elicit an appropriate response. The more open-ended they are, the more inviting.

I say the whole thing again, these judges may disagree, I'll update you after the break, but I don't want to let the opening statement portion having set the tone for a lot of commentary to come in response to what was heard during the course of the opening statements, if that makes any sense.

I'm not asking you to do anything at this point, just think about it. I'll talk to these other judges and see where they fall on this, and then we'll go from there.

[82] MR. HAMILTON: Thank you, Your Honor.

MR. FARR: Thank you, Your Honor.

(Bench conference concluded.)

THE COURT: All right. Let's take a 15-minute recess.

(At 11:06 a.m., break taken.)

(At 11:23 a.m., break concluded.)

THE COURT: All right. Senator Blue, you may return to the witness stand. You may continue.

MR. STRACH: Thank you, Your Honor.

BY MR. STRACH:

Q Senator Blue, I want to turn your attention for a moment to the development of the 2011 enacted Congressional Plans at issue in this case.

A Okay.

Q Did you at any point in the Legislative process in 2011 submit any alternative redistricting – Congressional Redistricting Plans yourself?

A Not me individually, no. We had several plans that I looked at. There was a plan submitted, I think, by the – I was not the Democratic leader at the time, but there was a plan submitted by the Democratic caucus in the Senate, and as you alluded to earlier, there was a plan that may have been submitted by the Black Caucus and the General Assembly, but – and I looked at them. I didn't submit any individual plans [83] myself.

Q Do you know when those plans were submitted by the Legislative Black Caucus and others on the Democratic side in the 2011 redistricting process?

A I think they were some time after Senator Rucho and Representative Lewis submitted their plans, I think. I'm not absolutely sure since I didn't personally deliver them.

Q All right. Isn't it true that those were submitted to the legislature on the first day of the redistricting session in 2011?

A I wouldn't disagree with that, I just don't know.

Q All right. And did you, with regard to – well, there were two different alternative plans – there were actually three. There were the plans submitted by the Southern Coalition for Social Justice which were submitted earlier in the process. Did you have any input on those plans?

A No input on them. I criticized them because I thought that they unnecessarily, in some instances, were trying to create majority minority districts where they weren't justified and the percentages that some of them looked at.

Q Okay. So you criticized the SCSJ plan?

A Sure did, sure.

Q And who did you submit that criticism to?

A To the ones who were basically espousing them. I informed their counsel that – North Carolina is not Alabama or [84] Mississippi, quite frankly, and it did not have the same kind of polarized voting history that those states had. Unlike those other southern states, North Carolina had only 40 counties covered by Section 5 of the Voting Rights Act because you hadn't had the practice as prevalent in North Carolina as you

had in those other southern states. And so I suggested that some of the remedies were a one size fits all, that you don't create these districts just because you can based on race, that it goes in the opposite direction of where I think our state and our country ought to be going.

There may have been some other plan, but I remember specifically when I first heard of the plans proposed by the southern coalition group.

Q And when you say you criticized the plans to their counsel, I think, who was that?

A I'm trying to think who had it then. I know Anita Earls represents the group. I'm not sure that it was Anita, but there are various people who've been involved. Irv Joyner and some of the other people who had looked at it.

Q All right. Did you ever publicly criticize the SCSJ Congressional proposal?

A Did I have press conferences beating them up? No. There was no need – no need to publicly do it because I expressed my opinions to the redistricting chairs. I did in my debate on the Senate floor. I did in discussions. There was some Senate [85] committee, although I wasn't a member of the redistricting committee where Senator Rucho gave me an opportunity to say something, and I was critical of any effort to unduly pack black voters into as few a districts as possible.

Q On the Senate floor in the debate on the 2011 plans, did you ever criticize the SCSJ proposal?

A I criticized the proposal that was before us, which was Rucho 1 or – Rucho 2, I think, was the final plan we were acting on, and I openly criticized it and made probably a 30-minute speech. It and any plan

that unduly packed black voters, whether it was a Congressional Plan or a House Plan or a Senate Plan without justification for it, and I thought that the simple justification were those set forth initially in the *Gingles* decision, where you could show sufficient polarization, and I figured you couldn't do that in the districts that were created in either of those plans, or that it had not been done for this election cycle.

It had been done 20 years ago and maybe adopted 10 years ago, but there was not any kind of polarization study done, that I'm aware of, on the districts that were created, either Congressional or Legislative in 2011. And I can't help but think that a lot of the counties had elected black sheriffs. They had elected black officeholders in many positions since 1990.

And so my first argument, and I suggested to Senator [86] Rucho in my debate on the Senate floor was that in my mind the Fourteenth Amendment required that you have a compelling state interest to do it, and then if you could find that, it had – that solution had to be narrowly tailored to address the issue that you were trying to address, not just packing districts with 50 percent plus when they had performed the way they were designed to perform with less than 40 in many instances, but certainly less than 50 percent majority minority population in 90 plus percent of the cases.

And so as I criticized that with Senator Rucho, I hope that criticism, or at least observation, would have registered with the sponsors of the other plans because they backed off of their plans.

Q Okay. So when the – when the – well, let me ask you this: Did you ever reduce your criticisms of the SCSJ plan to writing and submit that to anyone?

A No.

Q Other than your debates on the Senate floor, did you ever reduce your criticisms of the proposed enacted plans and submit that to anyone? Did you ever reduce those to writing?

A I have. I did a lecture at the Wake Forest law school making observations about all of the maps and I've spoken to law school groups at various times about the maps and what I thought some of the flaws were. I have – not just law school groups, but civic groups, classes, so I have criticized them on [87] many instances; and, again, my criticism is not at the individuals specifically who did it, but I just think that they're out of the spirit of the Voting Rights Act, and they tend to segregate more than to lead us to an integrated continuous society.

Q Right. And all I'm asking, Senator Blue, is there's voluminous records in this case. I'm not aware of a memo or any writing from you to Representative Lewis or Senator Rucho criticizing either the SCSJ plans or the proposed enacted plans. Am I missing something or is there no such –

A No, sir. I never directed any writings to Senator Rucho or Representative Lewis. My comments to them were in the context of the Legislative setting, and I did a rather lengthy floor debate on the Senate plan; and, again, as I said, I commented at the committee, and I commented to the press when they would ask me on various of these plans. But, no, I never did any formal submission to Senator Rucho or Representative Lewis regarding them, other than the normal way we communicate about Legislative issues.

Q All right. And you talked about black candidates winning an election. Is it fair to say that most, if not all, of your experience with black

candidates winning elections is in Wake County where you've been most of your career, is that correct?

A No, that's not correct.

Q Do you have specific information or knowledge about [88] similar type information regarding candidates in the northeast part of the state?

A Yeah, there are instances. As I said, there are black sheriffs in counties up there that are not majority-black. There are commission chairs. There are school boards. I mean, the history in the state in the 40 covered counties, at least those that were covered initially by the '65 Voting Rights Act, was that polarized voting was commonplace, and I know that in the 1980s formulation that led to *Gingles*, there was testimony that no black candidate had ever gotten more than 10 percent of the white vote east of Interstate-95, you know, one county over from Wake County, but in the other 60 counties, that was not necessarily so.

And one would think over the 30-year period, as we've basically had more desegregation of public schools, mind you that didn't start in earnest until the 1970s, and this data was predicated on stuff that happened before 1980, but over the 30-year period, one would certainly hope that if you did a current day polarization study, you would find that there would be much greater cross-racial voting in those areas.

And what I'm suggesting is that study was not done. If that study showed that you still had polarized voting, African-American still could not elect the candidates of their choice, be them black or white, and that you had a geographical area that was sufficiently compact enough that you would then [89] need to do something to remedy that. But the remedy shouldn't be put in place to last in perpetuity, because when you

put it in place to last in perpetuity, you're simply preserving the status quo forever, and that's what we want to move away from and that's what I think the Voting Rights Act was designed to do.

Q Senator Blue, were you aware of the polarization study conducted by SCSJ expert Dr. Block?

A No, I was not – I didn't see that. SCSJ?

Q SCSJ. Were you aware of the study by their expert of racially polarized –

A I never saw that. It was not – it was not part of our deliberation in the Senate debate.

Q All right. If the transcripts in the record say otherwise, you'd obviously be willing to rely on the written record?

A Oh, ab – yeah, I don't know. I mean, I never heard anybody mention those polarized studies in our debate. It certainly was not mentioned in the Senate debate. What was mentioned was that somebody had studied polarized voting in the '90s and 2000 and that same thing was still occurring, but there was no current study of polarized voting on a district-by-district basis as far as I know. And it was my feeling, and I think a requirement, that you look at it on a district-by-district basis, especially in a state like North [90] Carolina where you had 40 counties that had a different history than the other 60 counties.

Q Right. And when the state was covered under the Voting Rights Act, it was counties that were covered, right, not districts? Weren't there 40 counties, not 40 districts that were covered?

A Forty counties, yes.

Q Right. And were you also aware of a racial polarization study done by Dr. Brunell who expanded upon Dr. Block's work? Were you aware of that?

A In 2011?

Q In 2011, yes, sir.

A 2011?

Q 2011.

A No, nobody referred to that specifically. I didn't see that as part of the presentation before the committees.

Q All right. So your testimony today is based on your belief that there was racially polarized voting analysis that was lacking before the legislature in 2011?

A My testimony today is I was not aware of any district-by-district polarization study that was done based on the 2010 census and the other factors that would have been used for 2011 redistricting. If it was, in fact, looked at, it was not made part of the debate or the arguments in the Senate and when the plan was presented to us, neither the Congressional [91] Plan nor the Senate Redistricting Plan.

Q All right. And just to be clear, though, your testimony today is you are not aware of, and you never read, the reports by Dr. Block or Dr. Brunell?

A I know that there was a report that said that the polarization studies from 20 – from 1990 or '91 and 2001 show that there was polarized voting in North Carolina and that that polarized voting continued. I never saw any data, was not presented with any report or any other indication that there was a polarization study done on a district by district basis either in the

Congressional Districts or the Legislative Districts that were made majority minority black in 2011.

Q All right. Now, Senator Blue, turning – shifting back to Congressional District 1, and this is related to this polarization issue we've been discussing. Isn't it true that at least as late as 1997 the conditions existed in that district for what we call a VRA district or a majority-black district?

A In the Congressional District?

Q Yes, sir.

A Yeah, because there was a district that was created and nobody – nobody challenged it in a serious way.

Q And in the exhibit that we looked at earlier, Exhibit 73, which was the preclearance submission for the '97 plan, do you recall that the state stated in that that the *Gingles* factors [92] were still in effect in CD 1 at that time?

A In 1997, yes, because there had been a study done in that time frame within the last three or four years, I think.

Q All right. Now, you said that in 2001 you were on the redistricting committee that created the redistricting plans that year, is that right?

A As I recall, yes.

Q All right.

A And, again, understand, Mr. Strach, that in '80, '90, and 2000, all members got access to the redistricting process, the debates in the redistricting committees, and members were consulted individually about their proposed districts, be they Republican or Democrat. That was the process on those districts prior to 2011.

So, as I said, I participated in discussions about Congressional Districts as well as House districts in the 2000 redistricting cycle. I was not involved in 2003 because I had left the General Assembly, and ultimately the 2003 redistricting is what determined the districts that we all ran under from 2003 to 2010.

Q And isn't it true, Senator Blue, that even as late as 2001, when CD 1 was created, that the conditions satisfying the *Gingles* factors existed then, too?

A I think they probably did in the counties where the studies had been done, but the difference is that there were [93] multiple counties dragged into the Congressional District 1 in 2011 that were not Section 5 counties, and specifically I mentioned Durham County again.

Durham County had never been a Section 5 county. In the *Gingles* decision the Court specifically found that there was not polarized voting in Durham County that – or specifically held that there was not polarized voting in Durham County, that Durham County residents, African-American and others, could elect the candidates of their choice, and so there was no requirement to even draw a minority district in Durham, even though it was easily drawable because you had a compact enough population to do it in.

The case law didn't require it. The General Assembly just decided to draw one so that it wouldn't be sort of standing out like the others.

Q Now, you agree, though, that other than Durham County, there are a lot of other counties in 2011 CD 1 that are in fact Section 5 counties, is that correct?

A Absolutely, I agree totally with you. And, again, most of the counties in that district are east of Interstate 95.

Q And Senator Blue, with regard to the finding in *Gingles* that there was no polarized voting in Durham, that was in the context of a multimember district, is that correct?

A Um-hum.

Q Okay. Not a single member district?

[94] A But if there's no polarized voting in a multimember

district, there's none in a single member district. The finding is no polarized voting.

Q Right.

A That the whites vote for African-Americans and a percentage high enough so that you can't prove that it's polarized voting against African-Americans.

Q Senator Blue, this relates to the point we made earlier about single-shot voting, correct. Wasn't it possible to single-shot vote in Durham *in the Gingles* era?

A No, because that was a state-wide phenomena. That happened in Mecklenburg. That happened in Cumberland, which was a covered county, Cumberland was.

Q Right. I understand. The only point I'm trying to get you to agree with is that district was a multimember district in Durham and folks could single-shot if they wanted to?

A But the point is in *Gingles* the Court said that you don't have to draw a single member district in this multimember setting. Regardless of what they're

doing, you cannot show that there's white polarized voting against black candidates. That was the specific holding in *Gingles*.

Q All right. Well, *Gingles* speaks for itself.

A Yes, sir.

Q We'll let the Court decide what *Gingles* means. In Congressional District 1, Senator Blue, under the 2001 plan, do [95] you recall that the black percentage of Democrats in that district was a super majority?

A The black percentage of blacks in the Democratic primary was a majority.

Q Yes. Wasn't it a super majority, Senator Blue?

A Super majority being what?

Q Over 60 percent?

A I don't know whether that was the fact or not; and, again, what I remember looking at it is that Eva Clayton, who represented the district at the time, had consistently gotten higher percentages of the vote after her initial run in a district that was somewhat different against now Congressman Walter Jones, and her numbers kept going up. And I think maybe by the end of the decade, she was getting close to 70 percent of the vote in the general election and not having any serious primary opposition or any opposition that amounted to very much, and may have been getting 80 plus percent when she was challenged in the primary.

I mean, it was clearly a district that Clayton was going to consistently be elected in and history showed that everybody else, even though the numbers went down, were elected in it. Frank Ballance was elected in it, first term by a comfortable margin. G.K. Butterfield was – has consistently been elected in it,

prior to 2010 when it had far less than 50 percent of black voting-age population.

[96] Q Right. My question though is do you have any reason to

dispute me when I say that the black percentage in the Democratic Party, in terms of controlling the Democratic Party, is over 60 percent?

A I just don't know. I just don't know. I don't know that that was one of the factors that really was focused on that much. What was looked at is that there was a feeling that that – that the *Gingles* factors were still prevalent in the 1st Congressional District as it was comprised, and I think all but one or two counties in the district, and it may be all of them, were Section 5 counties. But Durham County, the most pronounced of the counties in it now, had never been a Section 5 county, had never violated any of the *Gingles* principles, and to build a district around Durham County saying that you are forced to take the percentages above 50 percent just didn't quite register. That's the only point I was trying to make.

MR. STRACH: Your Honor, may I approach the witness with an exhibit?

THE COURT: You may.

BY MR. SPEAS:

Q Senator Blue, what I've handed you has been marked Defendant's Exhibit 2.64.

A Um-hum.

Q It's a chart regarding the 2001 Congressional Plan, and there's some data on this chart, and I simply want to draw your [97] attention to about the middle of the chart. You'll see the top part of the chart regards District 1. Do you see that?

A Yes.

Q And if you move over to the right on this chart, at the top part of it, there's a column called "black portion of DEMS," do you see that column?

A I see that.

Q And so for Congressional District 1, the black portion of DEMS in that particular district under the 2001 plan was 66.55 percent. Do you see that?

A Yep, I see that.

Q All right. Do you have any reason to believe that that's incorrect?

A I have no reason to believe that that's correct for 2010. It doesn't say what it is for 2008 and 2006, but, no, I don't dispute that.

Q And at the bottom of that column, there's a number that says that state-wide, without regard to districts, 41.38 percent of DEM, Democrats, are black, do you see that, the last number in that column below?

A I see that, yes.

Q So the proportion of Democrats who were black in Congressional District 1 was significantly greater than their state-wide proportion. Would you agree with me on that?

A I agree with you on that, and that's in 2010 before [98] redistricting.

Q This was on – this was in – for 2000 – right, that's right, this is for the 2001 plan –

A Um-hum.

Q – correct?

A Um-hum.

Q Now, you were involved in the creation of the 2001 Congressional Plan, correct?

A Um-hum.

Q As part of the Redistricting Committee?

A Yes.

Q Why would it be necessary to ensure that black voters were a super majority of the Democrat Party in that district in 2001?

A A good portion of the district consisted of whole counties, and so you would tend to, I guess, dilute the white – the overall population. I don't know what this number would look like in the 2012 election, the 2011 redistricting plan, but you're talking about the percentage of voters, not the percent of black voting-age population of black registered voter I take it. You're talking about those who were inspired enough to go vote in 2010, and so I don't know what – I'm trying to figure out what the numbers mean and how they would compare with the current numbers, say, 2012, because in 2012 probably it was a much higher percentage of – the black [99] portion of the Democrats was probably much higher than the number that you see here.

Q Right. And I'm just focused on 2001 right now, if that's okay. Didn't you and your colleagues in 2001 ensure that blacks were a super majority of Democrats in that district to ensure that in a race between a black Democrat and a white Democrat that the black voters could control the outcome of that race?

A That was part of the – not necessarily that the black voter – the black candidate would control it, that the black citizens in that district would be able to elect the candidate of their choice. Now, what the numbers

looked like in 2010, Mr. Strach, would be totally different than what they looked like in 2001.

And the reason that they would be different, you've already pointed out. That district lost more than 15 percent of its population base. It lost – it was not – not lost it but did not increase its population base. It was almost 100,000 people short at the redistricting effort, so it changed from 2001 to 2010, and you're giving me numbers to comment on that are based on turnout as opposed to who's registered or who's black voting-age population. I'm simply trying to understand it. I'm not trying to evade your question, but I'm simply trying to understand what you want me to observe on this.

[100] MR. STRACH: That's fine, Senator Blue. I actually think you've answered the question. Your Honor, I don't have any further questions.

THE COURT: Redirect?

MR. SPEAS: No, Your Honor, thank you.

Your Honor, we would call Congressman Mel Watt to the stand.

(Witness sworn by the clerk.)

MELVIN WATT,

PLAINTIFF'S WITNESS SWORN AT 11:52 a.m.

DIRECT EXAMINATION

BY MR. SPEAS:

Q Would you state your name for the record, please.

A Melvin Watt.

Q And would you tell the Court a little bit about where you grew up and where you went to school?

A I was born in Mecklenburg County outside of Charlotte. Went to high school, segregated high schools – schools all the way – public schools in Mecklenburg County.

Graduated from high school in 1963, and then went on to the University of North Carolina, got a BS degree in business administration from the University of North Carolina at Chapel Hill in 1967, and then went to Yale Law School and got an LLM, which was subsequently converted to a JD degree from Yale University Law School in 1970.

[101] Q And did you practice law in North Carolina for thereafter?

A I did. I went back to North Carolina in 1971 and practiced law from 1971 to 1990 – I guess early 1993 in Charlotte.

Q And what firm were you with?

A The firm at that time was Chambers, Stein, Ferguson & Lanning. In subsequent iterations of it, it was known as The Chambers Firm.

Q And was it a firm significantly involved in civil rights litigation?

A It was, but I went to the firm, actually, to – because there was a recognition that there was more and more an economic component to civil rights. And so, my role was really to start a business practice, and I did – that's basically what I did for 20 years, small businesses, real estate, estates work, and some workers' compensation.

Q At some point, did you become interested in politics?

A Yes. I got a call from Harvey Gant one day after he had been appointed to the Charlotte City Council to

replace an individual who had gone on to the State Senate. And he had to run a campaign, and he asked me to be his campaign manager. I think that was 1974. And he was running for the Charlotte City Council in 1975, I believe it was.

Q Okay. And as a result of that experience, did you learn – did you become interested in running for office [102] yourself?

A No, not really. I managed his political campaigns for city council in '77 – '75, '77, and then in 1979, he called and said he was going to run for mayor of Charlotte, and I managed his campaign for mayor of Charlotte. We lost that election by about 95 votes out of 100,000 votes cast in the Democratic primary. So he was out of office.

Then, two years later, he ran for the city council again and was overwhelmingly elected, became the mayor pro tem. And then two years after that, he ran for mayor again. I managed that campaign, and he was elected mayor of Charlotte in that election.

Q And –

A And then, subsequently, he, in 19 – let me get my years right – 1989, he called me and said he was going to run for the United States Senate against Jesse Helms, and I managed his first state-wide campaign in 1990. And, of course, he lost that election. And then they created the 12th Congressional District based on the 2000 Census.

And I called him and said I was ready to manage his campaign for Congress, and he told me he was not going to run, and suggested that I might consider doing it. And I did.

Q And that was in 1992 that you first ran for Congress?

A 1992, yes.

Q And I believe you were elected for 11 terms?

[103] A I was elected for 11 straight terms, right.

Q You're not currently in Congress?

A That is correct.

Q What are you doing at present?

A I'm the Director of the Federal Housing Finance Agency as an independent agency that has regulatory supervision over the federal home loan banks and Fannie Mae and Freddie Mac.

Q And, Congressman, over the years, were you aware of the percentage of your district that was African-American?

A Yes, I was. I tracked it. It was constantly in litigation the first 10 years I was in Congress. I think the district changed at least four or five times, some of which I ran in and some of which got thrown out before the subsequent election. But in the early stages, the Congressional District was majority – the voting-age population was majority African-American.

And then the Court ruled that race was being taken into account too much, and so they drew the district down. And there was district that I ran in in which the African-American population was about 35 or 36 percent, and then that one got changed. And we finally settled on a district that was approximately 40, 41, 42 percent African-American, and that one was approved by the Supreme Court.

Q Is it accurate, Congressman, that at every election since 1998, the African-American voting-age population in your [104] district was less than 50 percent?

A That's correct.

Q And at one point, it actually got down to, I think, 32 or so percent?

A Somewhere – I was thinking it was a little bit higher than that, but it probably was down to 32 percent.

Q And like most politicians, you probably are familiar with how you did in those elections?

A Yes, I tracked that. And when the district was over 40 percent, I generally got between 60 and 65 percent of the vote. The one occasion where the minority percentage had been drawn down to 32 or whatever it was percent that we agreed on, I got approximately 55 percent of the vote. That was the election in which they spent about a million dollars against me telling people how terrible I was.

Q Congressman Watt, you're a student of politics. Tell the Court what you think accounts for those margins of victory in a district that was, since 1998, less than 50 percent African-American?

A Well, I would like to say good representation first. I think that is a factor in trying to serve all of the members of the Congressional District without regard to race or gender or ethnicity. Over the years, and actually going all the way back to when I managed campaigns for Harvey Gant in Charlotte, we had developed a pretty strong process for building coalitions [105] across racial lines, across precinct lines, and racial attitudes were in the process of changing, and they have continued to change over time.

Q Now, let's turn our attention to the 2011 redistricting. You were still in Congress at that point?

A That's correct.

Q Okay. Were you approached by Senator Rucho to meet with him with regard to redistricting?

A Yes, I was. He asked me if I would come and meet with him and give him my thoughts about congressional redistricting in general and redistricting. And I told him I'd be happy to do that, and I went and met with him.

Q Would you share with the Court what you shared with Senator Rucho on that occasion. That was in April, you said?

A April 25th of –

Q 2011?

A – 2011. I went to Raleigh with my district director and met with what we were told was going to be Senator Rucho and Representative Lewis, but Representative Lewis never showed up for the meeting. There was a staff person who came with Senator Rucho, so it was the four of us.

And by that time, I had looked at the numbers. My Congressional District, the 12th Congressional District, was approximately 2800 people over what the one person, one vote mandate would have required. And so I suggested to Senator [106] Rucho that we – that because the district had gone through so much litigation historically, and because the Supreme Court had finally approved the district, that the wise thing to do would be to do what I called a minimal change district for the 12th Congressional District.

And I suggested to him he wait to do that by dropping a couple of precincts that, for various reasons, I had felt like I had not served as well as I had the rest of the district, and by adding some smaller

precincts to get to the magic number of people in the Congressional District.

Q Anything else occur at that meeting that you recall? You simply provided him your views about your district?

A No. He seemed receptive to the idea, and there were no maps exchanged at that time. I identified, I think, the precincts that I suggested might be taken out. I'm not even sure I identified necessarily the precincts that would be put in, the smaller precincts. But the meeting was cordial and I thought – I thought constructive.

Q Had you known Senator Rucho before?

A I had. Senator Rucho was my orthodontist before I went to Congress. I still have some of his work in my mouth. And I considered him a friend. And so, in a sense, I mean, it was – I thought he was asking me to give him advice because he was telling me that he was going to be the – or had been appointed by that time as the Chair of the Redistricting Committee, and [107] was seeking my advice as a friend.

Q Would those changes to those two or three precincts have significantly affected the African-American population in that district?

A No, I don't think so. I don't think so. Basically, what I suggested to him was my Congressional District, throughout its history, had oriented generally up Interstate 85. And initially, a part of it went up Interstate 77. And at some point, if you went up Interstate 77, you'd get the towns of Huntersville, Cornelius, Davidson where Davidson College is, and my district actually went all the way into Iredell County, one of the iterations of it, until it got shot down.

Well, in 2000 – based on the 2000 Census, when the districts were drawn, the folks in Davidson around Davidson College wanted to stay in my Congressional District, and the rest of the district was going to be oriented up Interstate 85. So they kept Davidson in my Congressional District by going across the Cabarrus County line to pick it up. And it was just inconvenient to get up there to serve the people in Davidson – in Davidson, North Carolina, not Davidson County.

Q Okay. So when you left that meeting, you had no sense that the population in – the African-American population in the district would be significantly increased?

A No. In fact, I was suggesting to him that a minimal change district would comply with the law. And I didn't see [108] any need to increase African-American percentage in my Congressional District because I was getting 65 percent of the vote.

Q Did you subsequently learn that Senator Rucho planned, in fact, to increase the African-American population in the district significantly?

A I learned that later. He called me one weekend when I was in Charlotte and asked me if I would meet with him again, and I said, yes, but I don't want to drive all the way to Raleigh to do it. Both of us live here in Mecklenburg County; why don't we do it here in Charlotte? And he invited me to his home.

And I went to his home on a Monday morning, and we had a meeting at his home. It was kind of an interesting meeting because when he called me on the phone, I was expecting him to show me maps and tell me specifically how they planned to draw the district because it was later in the process by that – by the time of that meeting.

Q Was this in June?

A I think it was in June. And I got to the meeting, and it really was kind of an uneventful meeting in the sense that there were no maps. And at some point, I mean, I could sense that Senator Rucho was not very comfortable. And at some point, he said to me that his leadership had told him that he had to ramp the minority percentage in my Congressional District up to over 50 percent to comply with the Voting Rights [109] Law. And I said – I laughed. And I think his discomfort was because his leadership had told him that he was going to have to go out and justify that to the African-American community.

So I chuckled and said, Bob, you won't be able to justify this to the African-American community. It is not – the Voting Rights Act does not require it. It does not mandate it. And the African-American community will laugh at you because I'm getting 65 percent of the vote in a 40 percent black district. If you ramp my Congressional District African-American percentage up to over 50 percent, I'll probably get 80 percent of the vote, and – and that's not what the Voting Rights Act was designed to do.

Q Just a matter of curiosity, what percentage vote did you get in 19 – I'm sorry, in 2012 in the newly redrawn 12th District?

A In the newly redrawn district, I got about 80 percent of the vote, just like I had predicted to him I would.

Q Did you express your concerns about this decision to the North Carolina legislature?

A I did.

Q And did you ask Senator Graham to read a letter into the record of the debates of the North Carolina General Assembly about this matter?

A I did. I addressed a letter to Senator Rucho and Representative Lewis as chairs of the committee, and I copied [110] that letter to a number of other people. And Senator Graham – State Senator Graham was a friend of mine, and I asked him if he would read it into the record first at the hearing that they were having, not on the legislative floor. And then, subsequently, I did a second letter that I asked him to read on the floor of the Senate, I guess it was.

Q Okay. Congressman, would you turn to your tab in the notebook in front of you.

A I don't think I have a notebook in front of me. I'm sorry.

MR. SPEAS: If I may approach the witness, Your Honor.

THE COURT: You may.

BY MR. SPEAS:

Q Turning to Congressman Watt tab, and I'd like for you, Congressman, to turn to tab 30 in that notebook. And I would ask you if that is the transcript of the proceedings of North Carolina Senate on July 25, 2011, at which Senator Graham read your remarks into the record?

A It appears to be, yes, it does.

Q And your remarks begin on page 38 of – I'm sorry, they begin on page 37 of Exhibit 30. Do you see where your remarks begin?

A I do, yes.

Q Okay. And I would like for you, Congressman, if you [111] would, to turn with me over to page 38 of your remarks, and we have this up on the screen. I'd like for you to read for the Court the comments in your letter beginning at line 6 on page 38 and continuing to line 23.

A It says, Plan 1, propose to increase the African-American population in the 12th District from approximately 40 percent to over 50 percent. I have repeatedly expressed to Senator Rucho my belief that increasing the African-American population in the 12th District is not required, justified, or sanctioned by the Voting Rights Act.

The Voting Rights Act, which I was instrumental as a member of the House Judiciary Committee and as Chairman of the Congressional Black Caucus to get Congress to reauthorize and extend, was designed to counteract the ethnic and racially repolarized voting and level the playing field for African-American candidates and voters. It was not, as several Court decisions have indicated, designed to create racial ghettos in which African-American candidates are given inordinate and unreasonable election advantages.

Q Do you stand by those words today?

A I absolutely do.

MR. SPEAS: Thank you. No more questions.

THE COURT: Cross-examination? And just for the record, I don't know, ultimately, in terms of the official record whether these books will be a part of it, so I do think [112] when you have him turn to a tab, you probably ought to note the actual exhibit number. You understand what I'm –

MR. SPEAS: And it's exhibit – it's Plaintiff's Exhibit 30.

THE COURT: This one will be – looks like Defendant's 30.

MR. SPEAS: There is a version in our record of –

THE COURT: Okay.

MR. SPEAS: – Plaintiff's 30. There is also in their record at 30.

MR. FARR: May I make a suggestion to my learned colleague?

THE COURT: Make it to me and we'll see what he thinks of it.

MR. FARR: All right. Perhaps the Court might think this is a good idea. I don't know why we couldn't just put an exhibit sticker on this notebook, like a class exhibit sticker.

THE COURT: Whatever. In terms of an official record, I just want to make sure that ultimately at the end of the day, it's not confusing. So, for now, it's Plaintiff's 30?

MR. SPEAS: Plaintiff's 30.

MR. FARR: Defendant's 30?

THE COURT: Defendant's 30.

MR. SPEAS: Defendant's 30.

THE COURT: All right.

[113] MR. SPEAS: Thank you.

THE COURT: Defendant's 30.

MR. SPEAS: It has a plaintiff's number. Okay. Thank you.

THE COURT: All right. Cross-examination?

MR. FARR: Yes, Your Honor. I have a couple things I'd like to do. I would like to approach Congressman Watt.

Congressman Watt, may I address you as Congressman Watt?

THE WITNESS: I've been called worse. Yes.

MR. FARR: Thank you, sir. I'd like to approach Congressman Watt and give him a copy of exhibit – Defendant's Exhibit 126, which is the map notebook which I handed up to the Court previously.

THE COURT: All right.

MR. FARR: And I'd also like to have an easel up there so I could put some blowups of the map up so the Court and Congressman Watt could see some blowups of a couple of these maps, if that would be all right.

THE COURT: This is Defendant's Exhibit 126?

MR. FARR: Yes, sir.

THE COURT: All right. Any objection to Defendant's 126?

MR. SPEAS: No, Your Honor.

THE COURT: All right.

[114] (Discussion regarding placement of exhibits.)

MR. SPEAS: Your Honor, may I stand here?

THE COURT: You may.

CROSS-EXAMINATION

BY MR. FARR:

Q Okay. Congressman Watt, I want to go through the historical maps of the 12th District, and that's what Exhibit 126 is, so could you just turn in Exhibit 126 to Tab 1? Do you see Tab 1?

A Yes.

Q Now, does Tab 1 include a map of the original version of the 1st Congressional District as it was enacted in 1991? You can stay at the exhibit because there's a session log attached at the beginning of it.

A If you're asking me if I know whether this is the map, the answer is no. I mean, I take your word for it that it is, but I – I mean, it's been a lot of water under the bridge since this map was drawn. And I was – you should also know that I was not really involved in the drawing of any of these maps. I was the – my district was the subject of some of them, and I represented the district throughout, but I was not – in the state legislature, I was not actively participating in the drawing of maps.

Q Okay. But the – is my memory correct, Congressman Watt, that you were the first person to run in Congressional District [115] 12?

A Yes.

Q Okay. And do you recall that in '91, the General Assembly passed a map that only had one majority-black district, and the Justice Department objected to that under Section 5?

A I remember that, yes.

Q Okay. And there have been a bunch of cases about Congressional District 12, and are you familiar with those cases?

A Generally, yes.

Q Like the *Shaw* case. You're familiar with that?

A Generally, yes.

Q You're familiar with *Cromartie* case?

A Generally, yes.

Q Okay. Now, do you recall that when the Justice Department objected to the first Congressional Plan, that they suggested that the State create a majority-minority coalition district running from Mecklenburg County to Wilmington?

A I don't have any personal knowledge of that other than what I read in the newspaper. I mean, I was not involved in that process, to be quite honest.

Q Well, do you recall that that was what the objection from the Justice Department said?

A I recall that's what I read in the newspaper, yes.

Q And did the General Assembly enact a second majority-black [116] district running from Charlotte to Wilmington?

A I don't recall whether they did or not.

Q Okay. Well, let's turn to Tab 2. And can you recognize that as the 1992 Congressional Plan that first created the 12th District?

A This is the one that appears to run from Gastonia and Charlotte on the south to Durham on the north. Is that the one you're referencing?

Q Right.

A Yes.

Q And this was the district that was the subject of the *Shaw* litigation; is it not?

A I think that's correct.

Q And in the *Shaw* litigation, there was no ruling on the legality of the 1st Congressional District as it appears in this map; is that correct?

A I have no idea, to be quite honest with you.

Q Okay. And in the *Shaw* case, the second time it went to the Supreme Court, the Supreme Court ruled this version of District 12 to be an illegal racial gerrymander; is that correct?

A I think that's correct, yes.

Q All right. And then, if you turn to Tab 3, do you recognize this, that this was the plan that the General Assembly enacted after the *Shaw* case?

[117] A I know that this is a plan that was adopted. I don't know whether this is the plan that was adopted after the *Shaw* case. I mean, my problem is I was not involved in the litigation. I mean, I was running in these districts after the cases were decided, after the districts were drawn, but I was not actively involved in the drawing of any of the districts.

Q All right. But do you recall running in a district that looked like this in –

A Yes –

Q – the 2000 general election?

A Yes, I do recall that.

Q Okay. And is it fair to say that in this district, you're – the 12th District in this case does not go into Union County? Is that fair to say?

A Does it go into Union County? No, it has never gone into Union County that I'm aware of.

Q Okay. And it didn't go into Cabarrus County, either; did it?

A No.

Q And the 8th Congressional District in this plan did not go into Mecklenburg County; is that correct?

This '97 House/Senate Plan A, the 8th District does not go into Mecklenburg County?

A The 8th District is the – is what's in blue. It appears to go into Mecklenburg County, but I may be misreading.

[118] Q I think that's the 9th District. I think the color is blending.

A Oh, okay. I see what you're saying. So what color is the 8th District? I'm not sure.

Q It's the light blue.

A It's what?

Q The light blue. It's in Union County, in Catawba, and Stanly, and Hanson, and so forth.

A Okay.

Q So that – the 12th District didn't go into Cabarrus County under this plan?

A I'm sorry? Would you –

Q The 12th District was not pushed into Cabarrus County –

A That's correct, yes, not in this plan, right.

Q – in this plan? And the 8th District was not pushed into Mecklenburg County?

A Based on what you say, yes –

Q Okay.

A – that appears to be correct.

Q Now, turning to Tab 4, did you ever run in the 12th District as a representative by this plan?

A I don't know the answer to that. I ran in a 12th District that appeared similar to this, but I don't know whether it was this plan or not, to be quite honest.

Q All right. Did you – the district that you talked about [119] where you won with 55 percent of the vote.

A Is that this district?

Q That's what I'm going to ask you.

A Okay.

Q I think it is. I think it is. I want to know –

A I don't know, because I can't look at a map like this and really tell what's included. I mean, there's not enough detail. This is just a picture. So I'll take your word that this is the – this is the district that drew the minority percentage down to – but, I mean, you're asking me to testify about it, and I don't know the answer to that.

Q Okay. You ran one time in a district that had a minority population in the 30 percent range?

A That's correct.

Q Was that in 1998?

A That's correct.

Q And then, that district went away and you never had an election in that again?

A That's correct.

D In 2000, is it not true that you – your district that you ran in was the one that is represented under Tab 3, the '97 House/Senate Plan A.

A I'm not trying to avoid your question. I just can't look at these maps and tell you for certain that what you're saying is correct. I mean, I don't have any reason to dispute what [120] you're saying, but I suppose you're not testifying. So, you're trying to get me to confirm it, and I don't have the ability to do that based on looking solely at these – at the map.

Q Okay. Well, do you recall the counties that your district was in?

A Yes.

Q And so, in the 2000 election, what counties was your district in?

A Part of Mecklenburg. Is that Tab 3?

Q I'm looking at the 2000 election, which we're looking at Tab 3.

A Okay. According to this map, it would be Mecklenburg – part of Mecklenburg, part of Iredell, part of Rowan, part of Davidson, and part of Forsyth, and part of Guilford.

Q Okay. And then, if you turn to Tab 5, do you recall whether or not Guilford County was in the district that you ran in in '98?

MR. SPEAS: Your Honor, I object to this line of questioning. Mr. Farr has lots of witnesses over there who can testify from their own knowledge about what map is what. This witness simply does not have that information.

And I think what we've got here is Mr. Farr is testifying, not the witness, so I object to this.

THE COURT: I can sort through what's comments by counsel and what Senator Watt is testifying to. But in terms [121] of the substantive objection, response? Any response?

MR. FARR: Well, your Honor, he testified at length about all the elections that he ran in from '92 to 2010 in this district, so I think it's fair game for me to ask him about the districts he ran in.

THE COURT: All right. I'm going to overrule the objection and allow the question to continue. Now, I

understand your issue in terms of if he doesn't identify the – or doesn't know what the map is, a lot of colloquy from counsel about what it is may not advance things. But in terms of asking him about the districts in which he ran, I think this is fair, and I'll overrule.

Do you remember what the question was?

THE WITNESS: No, sir.

THE COURT: I didn't.

MR. FARR: I don't, either, Your Honor, so I'll start with another one.

THE COURT: Let's start back over. I think you were moving –

BY MR. FARR:

Q Actually, what I want to do now is I want to turn to the Congressional Zero Deviation Plan which is under Tab 5, and may I go to my exhibit now, Your Honor?

So Congressman Watt, Tab 5 is the plan that was enacted in 2001 that you – the 12th District that you ran in [122] was in the Congress Zero Deviation Plan?

THE COURT: You're welcome to stand there, Mr. Farr, but when you move away from the microphone, you need to raise your voice.

MR. FARR: Okay.

THE COURT: If you could ask that question again.

THE WITNESS: I have to take your word for it. I can't – I mean, I can't look at this map and tell you that it is or is not the map that was passed. I mean, but if you say it is, I don't have any reason to dispute that.

BY MR. FARR:

Q Okay. Do you recall what county your 2001 district was located in?

A Part of Mecklenburg, part of Cabarrus, part of Rowan, part of Davidson, part of Forsyth, and part of Guilford.

Q And looking at this map, you see the light blue that's the 8th District on this exhibit over here, Congressman Watt?

A Yes.

Q Okay. Now, I think we looked at the map. The map seemed to indicate that the 8th District was not in Mecklenburg County under the 97 Plan, and this map seems to indicate it was pushed into Mecklenburg County under the 2001 Plan. Do you know why that happened?

A I don't have any idea.

Q Okay. Now, in 2000, was there a Republican incumbent [123] elected from the 8th District named Robin Hayes?

A I served with Robin Hayes. I'm not sure which years he served.

Q And during the 2000 era, was he not defeated in District 8 by Congressman Kissell?

A He was defeated by Congressman Kissell at some point, yes.

Q Okay. And let's look at Congressional District 13. We got a new Congressional District in 2001; is that correct?

A That's correct.

Q And do you recall who the Chairman of the Senate Redistricting Committee was in 2001?

A I understand there was Representative Brad Miller, but I mean, I didn't know that at the time.

Q So he was the Chairman of the Senate Redistricting Committee in 2001?

A That's what I understand, yes.

Q And he played a role, then, in drawing District 13?

A I don't know the answer to that. I assume he did if he was chair of the committee.

Q Okay. And District 13 runs from Raleigh and goes up through Randall County, Pearson, Caswell, and then this arm that reaches down into Alamance County; do you see that?

A Yes.

Q And then it goes over to Pearson, splits Pearson, and then kind of squiggles down into Greensboro; do you see that?

[124] A Yes, I see it on the map.

Q Okay. Do you recall, in Greensboro, what happened to your 97th District, the district you ran in in 2000, how did that change in Greensboro under this Congressional Zero Deviation Plan?

A Some of the precincts on the northern – the most northern end of the district went out of my Congressional District and into the 13th District.

Q Right, and those were pretty heavily Democratic precincts?

A I assume they were. Greensboro is pretty heavily Democratic in most of the precincts.

Q And do you know the racial composition of the precincts that were taken out of your '97 version of the

12th District and put in the 2001 version of District 13?

A I probably did at some point, but I don't – I don't have a recollection of what they were.

Q All right. And from 2002 through 2010, who was elected to District 13?

A Brad Miller.

Q Right, the guy who was the Chairman of the Senate Redistricting Committee; is that right?

A Well, he was, yeah, I guess. Yeah.

Q Before I leave, let's put up – just to make this point. So, Congressman Watt, this is a blowup of the 2011 Congressional Plan. And there's a copy of it, I believe, in [125] Tab 12 of the notebook that I've given you, and I just have a couple of questions about this. Now –

A Is this the one that was approved finally?

Q It is.

A Okay.

Q You say you met with Senator Rucho twice?

A Yes.

Q The first time you met with him was in where?

A In Raleigh at the state legislative building.

Q All right. And do you recall someone named Brent Woodcox.

A I don't recall. I know there was a staff person in the meeting. Is that who you're talking about?

Q Yes.

A I know – I never got his name, I don't think.

Q Yes, sir. And during that meeting – excuse me for that. I didn't mean to hit you with the spotlight here. During that meeting, did you ask the staff person to stop taking notes of the meeting?

A I don't recall that I did. I don't believe I did.

Q Okay.

A I don't know how I would have had any authority over Senator Rucho's staff person.

Q Okay. So you don't recall telling this staff person that you didn't want him to take notes in the meeting?

A I don't recall it, but, you know, in context, this was a [126] meeting of friends, so I wasn't sure exactly what purpose even having staff people there was. But I don't recall giving him any such instruction, no.

Q All right. Now, Congressman Watt, I think – do you recall that back in the days of *Shaw*, there had a been suggestion from the Justice Department that the 2nd majority-black District should start in Charlotte and run to the east? Do you remember your testimony on that?

A You mean my testimony today on that?

Q Yeah, we talked about that.

A I don't think I've testified about that because I don't have any real knowledge of that district.

Q Okay. Did you recall that the Justice Department had made an objection?

A Yes, I do remember they made an objection and said draw a second voting rights district.

Q All right. And did you – at the time, did you talk to any of the congressmen that were in office right at that point in time to discuss the political impact on the

incumbent Democratic congressman if districts had been drawn from Charlotte all the way to Wilmington?

A I don't recall having any conversations with anybody along those lines. I recall having some conversations with some people that suggested that running a district from Charlotte, an urban city, through – down 74 would not create any district [127] that had any sensibilities to it. And I thought and I've expressed on a number of occasions that the urbanness of the 12th Congressional District was one of the – one of the defining criteria that was important.

That's where you had all of your historically black colleges and universities. That's where you had urban residents in Charlotte, Greensboro, Winston-Salem, all the way up to Durham, so – but I don't recall having any discussion with anybody about the politics of what impact it would have politically.

Q Okay. In your discussions with Senator Rucho, was there any discussion about – in 2011, the possibility of drawing your district from Charlotte right up to the east? Did that ever come up in your meetings with Senator Rucho?

A I don't recall that it did, but if it did, I probably would have suggested the same thing that I suggested a number of times before, that running a district in that way would just not make any sense in terms of cohesiveness of the district.

Q Okay. And do you recall having any discussion with Senator Rucho about whether or not native Americans in the Robeson County area would be cohesive with African-Americans in Mecklenburg if a district was drawn in that direction?

A I recall having a discussion with him about Representative McIntyre's representation of native

Americans and African-Americans, and – let me see how I can put this [128] politely. I thought that Representative McIntyre missed a number of opportunities to coalesce African-American voters and native American voters into a single bloc as opposed to dividing them constantly on a number of issues.

I don't recall any other conversation, and it certainly wasn't in the context of them being in the 12th Congressional District.

Q Okay. All right. Now, I'll put this back up for a second. This is the 2001 Plan Congressional Zero Deviation?

A Which tab is that?

Q I can't remember. It might be 6. There's two tabs for Congressional Zero Deviation.

THE COURT: Try 5.

MR. FARR: Five, I believe, is the 2000 Census –

THE COURT: Five and six.

MR. FARR: – and 6 is the 2010 Census.

THE COURT: All right.

THE WITNESS: So I'm looking at 6, that's what this is?

MR. FARR: Yeah.

THE WITNESS: Okay.

BY MR. FARR:

Q So I just wanted to ask you this question. The folks in Guilford County that were in the 13th District, do you know whether any of those voters had previously been in your 12th [129] District?

A I'm pretty sure some of them were, yes.

Q Okay. And so, under the 2001 plan, they were in the 13th District. Would you agree that was a strong Democratic district for Congressman Miller?

A You know, I never really looked that closely at Congressman Miller's district. I knew that it was making my travel time shorter because it was making – it was taking the most northern part of my Congressional District out. And by that time, I accepted the notion that it was better to have more compactness, because while I started out advocating that it was fine to go all the way to Durham, I also knew that my experience was that it put a lot of miles on your car and a lot of miles on your body to travel that distance to represent people.

Q Okay. Did you have any discussions with Senator Rucho about Section 5 and how that applied to voters in Guilford County?

A I told him I understood that Greensboro – that Guilford County was a Section 5 district, and that I thought that to retrogress might be a problem legally, but I also made it clear to him that to ramp up the percentage of African-Americans was not required based on my understanding of what the Voting Rights Act and the case law was saying.

Q Did you ever say that you thought there would be a [130] Section 5 objection if the new plan didn't take care of the voters in Guilford County?

A I think I said that there might be a problem if he retrogressed from the percentages that existed. But I also was very clear that increasing the minority percentage in this district was just bordering on insanity, because, as I told him, you know, I'm getting 65 percent of the vote. You're going to give me a district in which I get 80 percent or more of the vote,

and that's not justified nor mandated by the Voting Rights Act.

Q Okay. But isn't it true you – you testified at trial, Congressman Watt, you stated that you know a little bit about Section 5; do you recall that?

A Yes, I do.

Q And are there ever any Section 5 objections raised when the black community is fractured into different districts?

A I don't know the answer to that question. I know something about Section 5, but I don't know whether – every objection that might get raised.

Q Okay. Now, looking at that Congress Zero Deviation, it starts in Mecklenburg, it goes to Rowan, Davidson, Forsyth, and Guilford County; correct?

A Yeah. You skipped over Cabarrus.

Q I skipped Cabarrus, that's right. So that's six counties; correct?

[131] A Yes.

Q And they're all divided?

A Yes.

Q There's not a single whole county in that district?

A That's correct. There never has been a single whole county in the 12th Congressional District throughout its entire history. Well, actually, I take that back. There was one iteration where – that I saw, I'm not sure I ever ran in that, where all of Rowan County was in the 12th Congressional District.

Q But the ones that were enacted were based on divided counties?

A I can't remember whether I ran in that or whether it was just a proposal that never got passed.

Q All right. Well, if it's a whole county, if there was a whole county in one of these districts you ran in, it would be the 98th District, and we've gone over that map, and I won't do that again.

But what I want to do now is this is the 2011 plan. And this plan is – this is one that was enacted in 2011, and it's in a portion of Mecklenburg, Cabarrus, Rowan, Davidson, Forsyth, and Guilford; is that correct?

A Which tab is it?

Q This would be 12.

A Twelve. Yes, that's the same six counties – parts of the [132] same six counties, but I assume a different configuration.

Q Okay. But the 2011 12th District is in portions of the same six counties –

A That's correct.

Q – that were included in the 97th District in which you ran in the 2000 election?

A That's correct.

Q Now, Congressman Watt, when you met with Senator Rucho on April 25th with the staff person, did he tell you he was going to do what you asked him to do?

A No, he didn't, but he seemed receptive to what I was suggesting.

Q So he was friendly?

A Yes. Well, he's always been friendly. I mean –

Q But he never said he was going to do what you requested?

A That's correct.

Q And did you have any discussions with him about how your district related to the other districts that adjoined the 12th District?

A No. I mean, obviously, if you move precincts, it's going to have some impact, but my suggestion was a minimal degree of change which would result in minimal impact on the surrounding districts.

Q So minimal change would have resulted in the 8th District remaining in Mecklenburg County?

[133] A I don't know, because I was looking at it from the 12th Congressional District, and what I was suggesting to him was how he could minimally change the 12th Congressional District. I wasn't having discussions with him about the 8th or other Congressional Districts. I mean, I knew it would have some impact, but we were not at that level of detail.

Q Okay. So you had no discussions with Senator Rucho about the political impact of how District 12 would be drawn in 2011 on other Congressional Districts?

A I can't swear that I didn't have some discussion with him about political impact. I recall saying to him that my impression was that members of the delegation were happy with their general districts and were not lobbying to change substan-tially. That would be a political statement of sorts. But I don't think I was in a position to really talk about much other than the 12th Congressional District, which is what I thought the meeting was designed to talk about.

Q Okay. I want to ask you about your meeting with Senator Rucho in – at his house.

THE COURT: Let me ask you a question. How much longer do you have with this witness on cross, Mr. Farr?

MR. FARR: I would say 15, 20 minutes.

THE COURT: This is a good point, I think, to take a lunch recess.

MR. SPEAS: Your Honor, Congressman Watt has some [134] plans and obligations. If we could finish before lunch, it would be very helpful.

THE COURT: All right. We'll continue. Let's move it along.

MR. FARR: All right. Thank you, Your Honor.

BY MR. FARR:

Q So, Congressman Watt, when you met with Senator Rucho at his house, when was that again?

A It was a month or two after the meeting in Raleigh. I didn't have – I don't have a specific date for it, but I think it was in June.

Q Okay. Was anyone else present for that meeting?

A Senator Rucho's wife came in briefly, and Representative Samuelson was there for a part of the meeting.

Q Was Representative Samuelson there when you arrived?

A I think she was, but I'm not positive.

Q Was she there at the time you left?

A I'm not positive of that, either, but I think most of the conversations I had with Senator Rucho, I got the impression he wasn't trying to have it in front of Representative Samuelson because he was

embarrassed that he was being called on to do something that he didn't appear to be comfortable with.

Q All right. So what room did you meet Senator Rucho in his house?

A In his kitchen.

[135] Q And was –

A We stood around. I mean, he had he donuts and coffee, and we stood around a little island in his kitchen.

Q And did you go to any other room during the time you were there?

A I think he may have taken me on a tour of parts of his house, but we didn't – I don't think we met in those rooms.

Q When he took you on a tour of his house, did you have any discussion about redistricting, or did that occur in the kitchen?

A You're taxing my memory to a point that I couldn't swear to it, to be quite honest.

Q All right. So was the discussion that you've testified about, did that occur in the kitchen, about ramping up the district?

A You know, I have searched my mind because my recollection is that it actually occurred as we were leaving. And Senator Rucho appeared to want to show me the way back out of his community and used that as an excuse to go out front. And my recollection is that that's where the conversation – there wasn't much discussion about congressional redistricting in this meeting. I mean, I can't – one of the things that surprised me was that he would call me at home on a

weekend, ask me to meet with him. I thought he was going to show me maps.

[136] There were no maps. And he appeared not very comfortable having much discussion in front of Representative Samuelson. I'm not even sure how she got to the meeting. I didn't know she was coming to the meeting.

But at some point, he told me that his leadership had told him that they were going to ramp – or he must ramp up these districts to over 50 percent African-American, both the 1st and the 12th, and that it was going to be his job to go and convince the African-American community that that made sense.

And I said, Bob, that's just – you're not going to be able to do that, and I'm not going to be able to support you if you do that because I know that it does not make sense. And so, it is not required by the Voting Rights Act, it's not mandated, it's not justified. And for you to say that you're going to go and try to convince the black community that this is in their interest is just not going to fly, and I'm not going to sit idly by and say that this makes sense because I don't think it makes sense.

Q So you said you wouldn't sit idly by?

A Well, I don't know if I used those exact words, but I mean, you know, the essence of what I was saying was, look, I'm not going to support you if you go out and say that this is in the interests of the African-American community because I don't think it is.

Q All right. Now, do you know for sure where that [137] conversation took place?

A I don't know for sure where that conversation took place. I've already testified about that.

Q And do you know for sure whether or not Representative Samuelson was present when the conversation –

A I don't think she was present when that conversation took place, no.

Q You can remember she's not present, but you can't remember where the conversation took place?

A Well, I can remember – I can remember that I believed that she was not present because it appeared to me that Bob was going out of his way not to have her present. It seemed to me that she was – she invited herself to that meeting, it appeared to me.

Now, you know, that's – I can't swear to that, either, but it did not appear to me that he was interested in having this conversation in front of her.

Q So, Congressman Watt, you were the first person to serve in the 12th District, and you've testified that you were familiar with the *Shaw* litigation and the *Cromartie* case; correct?

A Yes, generally.

Q Right. And you're aware that in a case like this, if the plaintiff proves that race is the predominant motive, that the district's subject to a more heightened level of scrutiny than [138] if race is not the predominant motive? Don't you understand that?

A I think that there's some case law to that effect, yes.

Q Okay. And you were against a district that would draw the black population above 50 percent in your district; correct?

A Wasn't so much that I was against it. I mean, from my electoral advantage, it would've been a much, much easier district to run in. But, you know, I just

participated in the judiciary committee, in reauthorizing the Voting Rights Act, and I knew that the Voting Rights Act didn't stand for what he was suggesting he was planning to do.

Q Okay. That's your understanding of the Voting Rights Act?

A Beg your pardon?

Q That's your understanding of the Voting Rights Act, and you thought what Senator Rucho wanted to do violated your understanding of the Voting Rights Act?

A That's correct, yes.

Q Okay.

MR. FARR: Now, may I approach the witness, Your Honor?

THE COURT: You may.

MR. FARR: I have some exhibits I'd like to hand up to the Court.

BY MR. FARR:

Q Now, Congressman Watt, I've handed you Defendant's [139] Exhibit 28. Do you remember this exhibit?

A Yes.

Q Was this a statement that you prepared?

A I did, yes.

Q And did you send this to Senator Graham to have him read this at a committee hearing?

A I did, yes.

Q And so, this statement was prepared after you had your meeting with Senator Rucho at his house?

A That's correct.

Q And, by the way, when you say the 12th District is drawn over 50 percent, what census category are you relying on?

A I'm sorry, would you repeat that?

Q Do you know the different types of census categories for African-Americans?

A I don't, no.

Q Okay. Now – so this was a statement that you prepared to have Senator Graham read at a committee hearing, and this was prepared after you had told Senator Rucho that drawing your district over 50 percent did not comply with the Voting Rights Act; correct?

A That's correct.

Q And your understanding was that if Senator Rucho intended to draw the district over 50 percent, that could be used as evidence that race was the predominant motive for Congressional [140] District 12; is that correct?

A I don't know that I ever thought about it in that context until you suggested it, but it probably would be, but that didn't have anything to do with what I was doing.

Q All right. Now, in reading Defendant's Exhibit 28, which was going to be read to the General Assembly pursuant to your instructions, is there anything in this statement that you prepared, Congressman Watt, disclosing this conversation you say you had with Senator Rucho where he told you that leadership was requiring him to ramp up the district over 50 percent?

A No.

Q And don't you think that would have been important information for the General Assembly to have?

A Well –

Q Just yes or no, and then you can explain.

A It probably would be important information. But these statements, until Senator Rucho started talking about them publicly, I was treating as confidential conversations between me and Senator Rucho. When he started to misrepresent what I had said publicly, then that's when I started to say there's some sinister motivations taking place here, so the answer to your question is, no, it's not in here, but in a subsequent letter, I put that in context. The idea that it was read on the floor of the legislature puts it in context.

[141] Q Okay. We'll get to that in a second, Congressman Watt. But – so this statement was designed to refute public statements by Senator Rucho that she thought he had misrepresented what she had said; is that correct?

A Yes.

Q Did Senator Rucho ever make a public statement saying that you were the person who was responsible for drawing the district over 50 percent?

A I think there are public statements that imply that, yes.

Q Not imply it. Did he ever say it? Did he ever say –

A I mean, I – the last thing I'm going to do is go and look at every statement that Senator Rucho has made on this subject. I mean, that's just not something I –

Q Have you ever seen the statement by Senator Rucho where he stated that he drew the district up over 50 percent because you wanted it that way?

A I've seen a statement where he was very close to saying that, yes.

Q What do you mean by "very close"?

A Well, he was making it sound like this was my idea to ramp these minority percentages up, and I just knew that that was not the case.

Q Do you have a copy of that statement?

A I'm sure – I'm sure I would somewhere, but I don't have it here on the witness stand with me.

[142] Q Okay.

A I think if you read some of the exhibits where public statements were being made, they were making it sound like, somehow, this was my idea and Representative Butterfield's idea, and I just thought that was a ludicrous thing to suggest.

Q Okay.

A Because I knew it wasn't my idea, and I didn't think it was Representative Butterfield's idea, either.

Q All right, Congressman Watt, looking, again, at Defendant's Exhibit 28, you wrote this to correct the record for misrepresentations that you thought Senator Rucho made; is that right?

A Yes.

Q Okay.

A That's what the first paragraph says. I wish to submit this statement for the public record to provide additional context to the selective and misleading characterizations of my opinions that the chairs of

North Carolina's Legislative Redistricting Panel have entered into the record.

Q Okay.

A Yes.

Q And in this exhibit, you do not make – you do not say in this exhibit that Senator Rucho had publicly stated incorrectly that you were the person responsible for having the district drawn over 50 percent?

[143] A Well –

Q Is that yes or a no, and then you can explain your answer.

A No, I do not – well, I do say that because when I say to provide additional context to the selective and misleading characterizations of my opinions, what I'm saying is that he has misrepresented what I've said. And to the extent that he is either saying or implying that it was my idea to ramp these districts up to 50 percent, he's just – he's just out and out not telling the truth.

Q Okay. But you give – you give – in this statement, you give specific examples of statements you thought Senator Rucho had misrepresented what you told him; right? Aren't there some specific examples in this statement?

A The next to the last paragraph says, the chairs are incorrect in implying that I, at any time, endorse their configuration, which shifts large numbers of precincts in and out of the 12th District in an apparent effort to increase the African-American population in the district. If Senator Rucho and Representative Lewis were really interested in accommodating my preference by agreeing to model the new 12th District

after the current 12th District, as they profess on page 5 of their July 1, 2011, statement, shifting four precincts rather than the substantial number of precincts the 2011 plan proposes to shift would have been much more accommodating as well as much more consistent with the criteria [144] they outlined.

I don't know how I can be anymore direct in counteracting what they were doing.

Q But you don't say in here that Senator Rucho has misrepresented that I was the one who asked for the district to be drawn over 50 percent. That's not in here; is it?

A The first paragraph says that they've taken out of context and selectively misused the characterizations of my – of what I told him. I don't know what else I can tell you on that, sir.

Q I don't know what else you can tell me, either, Congressman Watt.

MR. FARR: May I approach the witness?

THE COURT: You may.

BY MR. FARR:

Q Congressman Watt, I've handed you Defense Exhibit 27. Do you have that in front of you?

A Yes, sir.

Q And is that a letter you prepared?

A It is, yes.

Q That's dated July 8?

A Yes.

Q And it's addressed to who?

A Oh, I'm sorry, to senator Rucho and Representative Lewis, and copied to a number of people in the state legislature.

[145] Q Okay. And the people who received the copies of this letter were members of the Legislative Black Caucus?

A Yes.

Q And I see Senator Blue got a copy of this letter?

A Yes.

Q And this letter was prepared after your meeting with Senator Rucho and Representative Samuelson at Senator Rucho's house?

A Yes.

Q In this letter, did you report that Senator Rucho had told you that he'd been ordered by leadership to ramp up the black percentage in the district to over 50 percent?

A I didn't specifically mention that, no.

Q Okay. And did you state in this letter that Senator Rucho had falsely or incorrectly stated publicly that it was your idea to draw the district over 50 percent?

A Well, the second sentence says, I'm writing to correct statements that you attributed to me in Claim 2 of the statement that you earlier misconstrued or misrepresented.

Q And then, in the bottom part, the first page, you list some of the things that you claim Senator Rucho didn't state correctly; right?

A Some of them, yes.

Q Okay. And in the part of this letter where you gave the list of the items that Senator Rucho had inappropriately [146] attributed to you, you did not say that Senator Rucho had stated publicly that you were the person who wanted the district ramped up over 50 percent.

A I'm sorry. Would you repeat the question? I'm trying to read – read what I said –

Q Okay, sure. Sure.

A – because I haven't seen it in a while.

Q In that letter, you've got a list of items that you are telling Senator Rucho and Representative Lewis, and two, four, six, seven members of the Legislative Black Caucus, you've got a list of items that you claim that Senator Rucho had misrepresented as far as what you'd said to him; correct?

A Yes.

Q And the list of items that you have in this letter about what Senator Rucho publicly misrep-resented does not include a statement by Senator Rucho where he had publicly said you were the person responsible or in favor of drawing the district over 50 percent?

A That's correct, but of course, this is responding to Claim 2 of a particular statement, which is what the letter was intended to do.

Q Okay. And I'm looking at the notebook that Mr. Speas gave you, this white notebook that doesn't have an exhibit sticker yet. And in that notebook, under Tab 30, there's a document listed as Defendant's Exhibit 30. Could you find that?

[147] A I have it, yes. That's the floor statement.

Q Yes, sir.

A Yes.

Q Tell us again what this was.

A Beg your pardon?

Q This was a statement that you prepared?

A It was the statement that was read into the record at – in the legislative session by Senator Graham, yes –

Q Okay.

A – that starting at page – I guess –

Q I'm on 37 –

A – 37.

Q – is where I think it starts.

A Do I have the right statement? Maybe that's Congressman Butterfield's statement.

MR. FARR: May I assist the witness, Your Honor?

THE COURT: You may.

THE WITNESS: Yes. Starting at page 37 is the letter that I – or statement I submitted.

BY MR. FARR:

Q Now, this statement was read during the session where the redistricting plans were actually enacted?

A I don't know that I can verify that, but I understood it was read on the floor during part of the debate, yes.

Q Okay. If you turn – don't lose your place on 37, but if [148] you turn to the front of that Exhibit 30, this indicates it's a transcript that was prepared on July 25, 2011 –

A Yes.

Q – is that right?

A Yes, I see that.

Q Okay. So you had prepared a statement that you asked Senator Graham to read for you at a session of the legislature on July 25, 2011; is that right?

A Yes.

Q Okay. Now, at the time that you wrote this statement, had you had any discussions about how the politics of the proposed plan would change the Congressional Districts? Had anyone talked to you about that?

A I don't remember having any specific conversations about any political consequences of any of these things.

Q So you never had anyone tell you that this new plan was a Republican gerrymander?

A I don't recall anybody telling me that. Maybe if you told me who you were talking about telling me, that might jog my memory.

Q Okay. Now, when you submitted this statement, you knew your district was going to be drawn over 50 percent in at least one census category?

A I knew that that's what they were proposing. It had not been adopted.

[149] Q Okay.

A And I was trying to express my opinion that it should not

be adopted.

Q So you were – you would have favored not adopting the plan that was ultimately adopted?

A That's – yes, I think that's correct. I would have favored not adopting it, yes.

Q Okay. And this statement that was read on July 25th during the legislative session that you prepared, anywhere in this statement do you report your conversation with Senator Rucho where he told you that his leadership had ordered him to ramp your black percentage in your district over 50 percent?

A Probably not.

Q And anywhere in the statement that you prepared, did you – that was read on July 25th, did you state that Senator Rucho had publicly misrepresented that you were the person responsible for ramping the district up over 50 percent?

A Well, I've already been on record a couple of times about that already. I don't know whether there's – I mean, without going through and reading it again, I haven't looked at this in quite a while, but I don't know the answer to your question without going all the way through the statement and reading.

Q Well, please do so, because it's only three pages.

A At the bottom of page 37, I say, and I want to make it clear that my statement – any statement or implication that [150] either plan was drawn to accommodate the wishes that I expressed is inaccurate and untrue.

Q Okay. Anything else?

A In the middle of page 39, I say, to maintain as a joint statement of Senator Rucho and Representative David –

Representative Lewis regarding the release of the Rucho-Lewis Congress 2 does, that maintaining the 12th District as a very strong Democratic district will

make adjoining districts more competitive for Republican candidates is seriously in error.

So, yeah, there were a couple of places where I took issue with what he was saying. But if you're asking did I – did I try to embarrass Senator Rucho publicly, the answer is no.

Q Okay. And I'm glad you pointed out that statement, because I want to ask you some questions about that on page 39. When you said that maintaining the 12th District as a very strong Democratic district will make adjoining districts more competitive for Republican candidates is seriously in error, what did you mean by that?

A Well, if you pack all the black people into one Congressional District, you'll make my election a lot easier, and you'll make adjoining Republican elections a lot easier for them. It won't make them more competitive. It won't make my district more competitive, and it won't make their district more competitive. It'll make both districts easier.

[151] And for them to be representing to the public that this was designed to make Congressional Districts more competitive, which is what they had said in their statement, was inaccurate.

Q Did they say more competitive or more competitive for Republicans? You say here, more competitive for Republicans.

A Well, more competitive for Republicans. The flip side of that coin is less competitive for Democrats. And more competitive for Democrats is – the flip side of that coin is less competitive for Republicans. I don't know how you can – I mean, they're opposite sides of the same coin. I'm not sure what you're driving at.

Q But you agree that drawing the district the way your district was drawn in 2011 benefited Republican candidates in adjoining districts?

A Benefited me politically by making my district less competitive. I would win at over 80 percent of the vote, which I did, and it would make adjoining Republican districts less competitive because they would – they would find it easier to win.

Q Okay. Well, what's – well, I've got – I'll finish up with these questions, Congressman Watt, then I'll be done.

What about in 2010, Congressman Miller was a Democrat and was elected in the 13th District. Does that jar with your memory?

[152] A Yeah, that's correct.

Q Okay. And in 2012, under the New Congressional Plan, was Congressman Miller elected in the 13th District?

A I don't think he was, no.

Q And wasn't George Holding elected?

A That's correct.

Q And isn't he a Republican?

A That's correct.

Q And in the 8th District in 2010, which adjoins the 12th District – in 2010, wasn't Congressman Kissell elected?

A That's correct.

Q And in 2012 under the 2011 Congressional Plan, Congressman Kissell lost to a Republican?

A That's correct. And by taking black votes and packing them into my Congressional District, he made

all the districts less competitive, yes. So I don't know how that's inconsistent with what I've said.

Q So by drawing the district the way that they drew it, it made many other districts more favorable for Republicans; is that right?

A It probably did; less competitive.

MR. FARR: No further questions, Your Honor.

THE COURT: Redirect?

MR. SPEAS: Couple of very quick, clarifying questions, Your Honor.

[153] REDIRECT EXAMINATION

BY MR. SPEAS:

Q Congressman Watt, you were asked – handed Exhibit J, Defendant's Exhibit No. 27, which is your July 8, 2011, letter. Do you have that?

A Yes.

Q And in that, do you refer to a statement made by Senator Rucho and Representative Lewis regarding June 23's public hearing in the first paragraph?

A Yes.

Q And in the third paragraph, do you refer to Claim 2 of that letter or that public statement?

A That's correct.

MR. SPEAS: May I approach the witness quickly, Your Honor?

BY MR. SPEAS:

Q Congressman Watt, I'm placing in front of you – I'll try to get the exhibit numbers right, Your Honor – Defendant's Exhibit D-5.1, which is the collection of public statements issued by Senator

Rucho and Representative Lewis. And I am turning to –

THE COURT: Which tab, so we can find it?

MR. SPEAS: June 22, 2011, statement is entitled, Statement by Representative Bob Rucho and Representative David Lewis regarding proposed VRA exhibits.

[154] Have you found that, Your Honor?

THE COURT: Just a second, let me catch up. June 22, you said?

MR. SPEAS: It's Tab 5. It's the June 22, 2011, statement. It's in the upper right-hand corner.

THE COURT: Okay. Handwritten up there –

MR. SPEAS: Handwritten.

THE COURT: – 6-22? Okay.

BY MR. SPEAS:

Q Let me show you that, Representative Watt, and ask you if you know whether a Congressional Plan had even been released on – as of that date, June 22, 2011?

A The question is, again, what?

Q Does that statement, the June 22 statement, concern only the State House and State Senate Plans and not the Congressional Plan?

MR. SPEAS: Your Honor, if I may approach the witness.

THE COURT: You may.

BY MR. SPEAS:

Q Congressman, if you would look at the 96 document in this ledger, it's the July 1 statement by

Representative Lewis and Senator Rucho. And it concerns relating to the Proposed Congressional Plan; is that correct?

A That's what the title says, yes.

[155] Q So, from that document, it appears that the Congressional Plans weren't even made public until July 2011?

A I don't know the answer to that. I mean, I wasn't tracking the timing of any of this. I'm sorry.

MR. SPEAS: Thank you very much. I don't have any other questions.

MR. FARR: No questions, Your Honor.

THE COURT: All right. You may step down.

THE WITNESS: Do I leave these here?

MR. SPEAS: Please.

MR. SPEAS: Your Honors, Congressman Watt needs to pursue other business. I assume he's able to.

THE COURT: Any objection to excusing Congressman Watt?

MR. FARR: No, we're happy to excuse him.

THE COURT: All right. You may be excused. We'll stand in luncheon recess until quarter to three.

(At 1:26 p.m., break taken.)

(At 2:47 p.m., break concluded.)

THE COURT: All right. Where are we? Are the plaintiffs ready to proceed with their next witness?

MR. SPEAS: Yes, Your Honor. The plaintiffs would call Representative Butterfield to the stand.

(Witness sworn by the clerk.)